1987

Utah Associated Municipal Power Systems v. Public Service Commision : Brief of Respondent

Utah Supreme Court

David Stott, Laurie Noda; Public Service Commission of Utah; Michael Ginsberg; Sidney G. Baucom, Thomas W. Forsgren, Edward A. Hunter, Jr.; Utah Power and Light Company; Donald B. Holbrook, Elizabeth M. Haslam, Sharon E. Sonnenreich; Jones, Waldo, Holbrook and McDonough; Attorneys for Respondents.

James A. Holtkamp; VanCott, Bagley, Cornwall and McCarthy; Attorneys for Petitioner.

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, Petitioner	:	
vs.	:	Case No. 870201
PUBLIC SERVICE COMMISSION OF UTAH, BRIAN E. STEWART, BRENT H. CAMERON, and JAMES M. BYRNE, Commissioners of the Public Service Commission of Utah,	:	Category No. 9
Respondents.	:	

BRIEF OF RESPONDENTS PUBLIC SERVICE COMMISSION OF UTAH, UTAH POWER & LIGHT COMPANY, DIVISION OF PUBLIC UTILITIES, AND UTILITY SHAREHOLDERS ASSOCIATION OF UTAH

David Stott, Esq. (USB #3128)
Laurie Noda, Esq. (USB #4753)
Public Service Commission of Utah
160 East 300 South
Salt Lake City, Utah 84110
Attorneys for Respondent, Public Service Commission

Michael Ginsberg, Esq. (USB #4516)
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114
Attorneys for Respondent, Division of Public Services

Sidney G. Baucom, Esq. (USB #247)
Thomas W. Forsgren, Esq. (USB #1104)
Edward A. Hunter, Jr., Esq. (USB #1592)
Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84110
Attorney for Respondent, Utah Power & Light Company

James A. Holtkamp, Esq. (USB #1533)
VanCott, Bagley, Cornwall & McCarthy
P.O. Box 45340
Salt Lake City, Utah 84145
Attorneys for Petitioner Utah Associated Municipal Power Systems

Donald B. Holbrook, Esq. (USB #1515)
Elizabeth M. Haslam, Esq. (USB #1409)
Sharon E. Sonnenreich, Esq.(USB #4918)
Jones, Waldo, Holbrook & McDonough
1500 First Interstate Plaza
Salt Lake City, Utah 84101
Attorneys for Utility Shareholders of Utah

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David Stott, Esq. (USB #3128)
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Public Service Commission of Utah
160 East 300 South
Salt Lake City, Utah 84110
Attorneys for Respondent, Public Service Commission

Michael Ginsberg, Esq. (USB #4516)
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114
Attorneys for Respondent, Division of Public Services

Sidney G. Baucom, Esq. (USB #247)
Thomas W. Forsgren, Esq. (USB #1104)
Edward A. Hunter, Jr., Esq. (USB #1592)
Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84110
Attorney for Respondent, Utah Power & Light Company

James A. Holtkamp, Esq. (USB #1533)
VanCott, Bagley, Cornwall & McCarthy
P.O. Box 45340
Salt Lake City, Utah 84145
Attorneys for Petitioner Utah Associated Municipal Power Systems

Donald B. Holbrook, Esq. (USB #1515)
Elizabeth M. Haslam, Esq. (USB #1409)
Sharon E. Sonnenreich, Esq.(USB #4918)
Jones, Waldo, Holbrook & McDonough
1500 First Interstate Plaza
Salt Lake City, Utah 84101
Attorneys for Utility Shareholders of Utah

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INTRODUCTION

The Public Service Commission of Utah ("PSC"), Division of Public Utilities ("Division"), the Utility Shareholders Association of Utah ("Shareholders") and Utah Power & Light Company ("UP&L") (collectively referred to as "Respondents") all participated in the proceedings below and hereby jointly submit this brief in response to Petitioner Utah Associated Municipal Power Systems' ("UAMPS") Brief on appeal ("UAMPS' Brief").

STATEMENT OF JURISDICTION

This Court lacks jurisdiction to consider UAMPS' appeal because UAMPS failed to raise the issues that it now asserts before this Court in a rehearing petition as required by Utah Code Ann. Section 54-7-15 (1988).* See Report and Order Authorizing Interim Solution to Southwest Utah Transmission Capacity Requirements, dated March 3, 1987, attached as Exhibit "A," Record at 012674 (hereafter "March Order") and Petition of UAMPS and St. George for Rehearing and Request for Stay, dated March 23, 1987, attached as Exhibit "B," Record at 012709 ("Rehearing Petition"). If the Court nonetheless wishes

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*All constitutional and statutory provisions are currently effective and were in effect during the case at bar, unless otherwise provided.

to consider and resolve such issues, it may do so under the circumstances set out below.

NATURE OF THE PROCEEDINGS BELOW

In the proceedings below, the PSC consolidated two cases. Case No. 85-2011-01 was initiated in August 1985 to consider UAMPS' application for a certificate of convenience and necessity to construct a 345 kV transmission line from central Utah to St. George, and UP&L's parallel proposal to construct a 345 kV transmission line to serve its southwestern Utah load and complete a 100 megawatt sale to Nevada Power Company. March Order at 2-3. Case 85-2011-01 was consolidated with Case No. 85-9908, which was initiated by the PSC in order to respond to the request of the United States Bureau of Land Management ("BLM") for PSC input as to whether it should grant the transmission right-of-way application of UAMPS or the competing application of UP&L. Id.

The PSC conducted hearings beginning in December 1985 and continuing until July 1986. During the pendency of the PSC's deliberations, the PSC determined that the record was incomplete because of a number of events, including the fact that the Nevada Public Service Commission denied UP&L's proposed 100 megawatt sale to Nevada Power Company. Id. at 3. Consequently, the PSC conducted further hearings and issued the

March Order to provide a short-term solution to the emergency power needs of the energy deficient southwestern Utah area during the 1987-1988 period. Id. at 4.

The March Order required UP&L to proceed with the construction of a short (twenty mile long) 345 kV capable, 138 kV operated, transmission line from Newcastle to its Central substation in southwestern Utah. Id. at 27. UAMPS disagreed with the PSC's decision and filed its Rehearing Petition which did not raise the issues presented on this appeal.[1] The Rehearing Petition was denied by the PSC on May 21, 1987. See Order Denying Petition for Rehearing attached as Exhibit "C," Record at 012782. Although UAMPS requested a stay from the PSC in its Rehearing Petition, UAMPS did not make such a request of this Court and the line has been completed and is presently providing service to southwestern Utah.

Subsequently the Nevada Public Service Commission approved Nevada Power Company's 165 megawatt purchase from UP&L, and UP&L filed an application with the PSC on September 25,

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[1] The only statement in UAMPS' Petition for Rehearing that bears any resemblance to an issue raised by UAMPS on appeal is found in paragraph 8 of the Petition wherein UAMPS petitions for rehearing the PSC's finding with respect to the effect of its proposal on rates charged to municipal ratepayers. See Exhibit "B" at 3, 8-9 and Record at 012712-012717-012718. UAMPS did not otherwise challenge the constitutionality of the Interlocal Act or the authority of the PSC thereunder.

1987, seeking a certificate to construct a 345 kV transmission line from its Sigurd substation to the Utah-Nevada border. See Application in Case No. 87-035-26 attached as Exhibit "D" (without exhibits). The application proposed that the new transmission line incorporate the twenty-mile segment ordered in the March Order and was otherwise virtually identical to the proposal considered by the PSC in Case No. 85-2011-01. Id. The PSC granted UP&L's application on December 1, 1987, ordering the Company to construct the line. The PSC in that order also established a separate docket to consider the issues of joint ownership and/or use of the transmission facilities which were authorized therein as between UP&L, UAMPS and Deseret Generation and Transmission Cooperative ("DG&T").[2] See Report and Order Authorizing Utah Power & Light Company to Construct a 345 kV Transmission Line, dated September 25, 1987, attached as Exhibit "E" (hereafter "December Order"). UAMPS participated in the proceedings but did not object to or seek rehearing of the December Order which certificated to UP&L the entire line from UP&L's Sigurd substation to the Utah-Nevada border.

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[2] As the proceedings developed, it became clear that UAMPS could not fully utilize, nor could it finance, its initially proposed 345 kV line on its own. UAMPS then promoted its project as one which contemplated joint ownership with UP&L. Hunter at 209-212; Barr at 2220. References to hearing testimony are indicated by the name of the witness and the hearing transcript page number. See also infra p. 6 note 4.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

UAMPS asserts three issues on appeal: 1) whether Utah Code Ann. Section 11-13-27 (which requires UAMPS to obtain a certificate of public convenience and necessity before building its proposed transmission line) is constitutional; 2) whether the PSC was correct in considering the impact of UAMPS' proposal on the rates of UAMPS' members; and 3) whether the PSC was within its constitutional authority in adopting as a decisional standard "the lowest cost construction to meet the emergency southwest Utah transmission requirements for the next few years, while leaving open as many future developments as possible."

The issues articulated by UAMPS are not properly before the Court because UAMPS' failed to raise them in its Rehearing Petition. Notwithstanding as more fully discussed below, if the Court wishes to resolve these issues it should consider other pertinent issues. As a preliminary matter this Court must decide whether it has jurisdiction to consider issues on appeal which UAMPS did not raise in its Rehearing Petition. Additionally, this appeal is moot because UAMPS acquiesced in the construction of the twenty mile line authorized in the March Order and did not petition for a rehearing

of the December Order authorizing the entire line of which the twenty mile line is a part.[3]

STATEMENT OF FACTS

UAMPS is a political subdivision of the state of Utah, organized and operating under the Interlocal Co-operation Act, Utah Code Ann. Section 11-13-1 to 36 ("Interlocal Act"). See attached Exhibit "F."

On August 2, 1985, UAMPS filed an application with the PSC for a certificate of convenience and necessity to construct a 345 kV transmission line from the Intermountain Power Project ("IPP") to near St. George, Utah. See attached Exhibit "G," Record at 008233 (the "Original Application"). The line would have had capacity to transmit 400 megawatts of power. Hunter at 267.[4]

In a September 3, 1985 hearing, the PSC requested the parties to file briefs on preliminary legal issues. Evidence presented at the hearings indicated that the transmission line activities of UAMPS may effect citizens of Utah besides those

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[3] DG&T is the only party which contested the December Order. It submitted a Petition for Rehearing and for Stay, dated December 21, 1987, and thereafter withdrew its Petition for Rehearing. See Withdrawal of Petition for Rehearing and for Stay, dated March 25, 1988.

[4] References to hearing testimony is the same page number as in the Record.

members listed in UAMPS original application. Specifically, UAMPS hoped to buy and sell additional amounts of bulk power to and from other regions of the country by building its line, as the first stage of a fully integrated transmission system, with other utilities outside the state of Utah. Additionally, UAMPS desired to provide a transmission grid throughout Utah; to transmit interstate power; and to develop sales and interconnect several Colorado utilities. In apparent response to an argument that UAMPS' proposal exceeded its legal authority, UAMPS moved to amend its Original Application. See UAMPS' Motion for Leave to File Amended Verified Application and Amended Verified Application, dated October, 1985 (Addendum D to UAMPS' Brief), Record at 008497.[5]

UAMPS' proposed Amended Verified Application omitted and amended sworn statements in the Original Application which represented UAMPS' intent to (1) build its line as the first stage of a fully-integrated transmission system with other

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[5] The Shareholders argued before the PSC that if the PSC had granted UAMPS permission to engage in the activities UAMPS proposed, it would have authorized UAMPS to engage in ultra vires activities; that is activities that were not "local in extent and use", and were otherwise unrelated to the needs of UAMPS' members. Utah Const. Article XI, § 5. The PSC did not, however, make any findings on the issue. The Shareholders non-assertion of that argument on appeal is not intended to constitute a waiver of the argument that UAMPS proposed activities would have been ultra vires if undertaken.

utilities outside of the State of Utah, thereby giving UAMPS the opportunity to buy and sell additional amounts of bulk power to and from other regions of the country, (2) to provide a transmission grid throughout Utah, (3) to transmit interstate power, (4) to interconnect with several Colorado utilities and otherwise to allow UAMPS to develop sales to other utilities. See Exhibit "G" which highlights UAMPS' Original Application with the omissions and changes contained in the Amended Application.

The PSC granted the motion. In so doing, it noted UAMPS' disingenuous motives as follows:

> Our examination of the proposed changes contained in the Amended Application leads us to believe that the intent of the changes is to eliminate any hint or suggestion that UAMPS intends to compete with UP&L as a broker of electrical energy rather than simply supplying the needs of its member cities in Southern Utah. It appears to us to be a somewhat disingenous attempt by UAMPS to cover its real motives in seeking to build the proposed transmission line, in light of the statements made in UAMPS' original application and the rather strong and unequivocal statements of UAMPS officials quoted in the news media concerning that entity's intentions to compete with UP&L in the wholesale energy market.
>
> Notwithstanding our dislike for an action that appears less than bona fide, we see nothing to be gained by refusing UAMPS the privilege of amending its Application, at least at this early stage of the case.

See Order Granting Motion to Amend Application, dated October 24, 1985 at 3, attached as Exhibit "H", Record at 008731 (hereafter "September Order").

The PSC correctly perceived UAMPS' motives. UAMPS' chief executive officer testified that notwithstanding the amendments to its Original Application the original intentions of UAMPS had not changed and that UAMPS intended to participate in a transmission grid throughout the entire Western United States and potentially Canada, to act as a transmission agent for others, and to otherwise use its line to increase its membership. McNeil at 2225-2237, 2268, 2280-2281.

In response to a PSC bench order on January 2, 1986, UAMPS submitted a Second Amended Verified Application wherein it applied alternatively to build a smaller voltage 230 kV line which UAMPS claimed was necessary to supply the needs of its members and provide access to DG&T. See attached Exhibit "I"; Record at 010034.

The proceedings focused on the purposes of UAMPS' and UP&L's proposed lines as well as numerous "public interest" issues, specifically:

(1) Whether the emergency electrical condition in southwestern Utah required an immediate resolution (Pierce at 7039-7042; Wilkinson at 3342; McArthur at 8123-24);[6]

(2) Whether UAMPS' proposed line would subject UP&L's existing transmission system to electrical disturbances and other reliability problems (Tucker at 2770-2775, 2801; Kusko at 1250-1253; Clark at 2681-2691);[7]

(3) Whether UAMPS' proposal would invade UP&L's certificated territory (Taylor at 5901-5903, 5910-5911,

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[6] The utility manager of St. George testified:

McArthur: [S]o we think that the diesel plant will, in fact, get us through two years.

It's close, too, but it could probably carry us through a couple of winters. If we don't quite get through that second winter, that could be close, but at least through a good first winter and then maybe a second.

Com. Stewart: So you were talking about maybe getting by next winter?

McArthur: Yes.

Id.

[7] The evidence showed that if IPP were to go unstable for any reason, the Utah system could separate and black out. For that reason, UP&L installed a separation scheme to mitigate against an IPP disturbance. UAMPS' proposed line would undermine UP&L's separation scheme and thereby subject UP&L's system to such disturbances. Based on his review of the evidence, Division witness, Dr. Kusko testified that the prime objective of building transmission to provide reliable service to southwest Utah and to transmit power to Nevada Power Company could not be accomplished under the UAMPS' proposal. Division Exhibit 7.

5920-5922; Schlesinger at 1819-1820; Faigle at 4587; UP&L 1, UP&L 1.8 and UP&L 1.11 (hearing exhibits));

(4) The impact of the alternative proposed lines on competition in the electric utility business in Utah (Position Statement of the Utah Attorney General Regarding Competition Issues, dated May 16, 1986, Record at 010931; Schlesinger at 1874-1876; Pierce at 7071-7073; Faigle at 4634-4638; Kumar at 3839-3845; Klepper at 3590-3598);

(5) The loads, including interstate surplus sales, expected to be served under the respective proposals (Hunter at 28-33; Millett at 2984-2985; Arlidge at 3732-3734; McNeil at 2197; Bryner at 6375-6378);

(6) The relative economic benefit to UP&L and UAMPS ratepayers should UP&L or UAMPS be given permission to construct their proposed lines (Bryner at 6375-6378; Pierce at 7131-7137);

(7) The relative impact of the competing proposals on the local, state and federal tax base (Colby at 3964-3966; Droubay at 3904-3906; Compton at 1615-1617; Johnson at 1274);

(8) The relative abilities of the parties to finance their proposed lines (Morris at 2009-2011; Barr at 2122-2124; Henry at 2082-2084);

(9) The relative cost and benefit of the respective proposals to the electrical consumers of Utah (Pierce at 7051-7052, 7090-7093, 7133-7134; Compton at 1557-1560; Droubay at 3881-3884); and

(10) The impact the alternative proposed transmission lines would have on Nevada Power Company's decision to buy UP&L's surplus capacity and the impact of such lines on reliability (Arlidge at 3721-3722) (for reliability reasons Nevada Power would not take power from UAMPS' proposed line).

The PSC did not authorize either of the initially proposed transmission lines, but ordered UP&L to construct a shorter transmission line. The PSC made findings on many factors considered in the lengthy proceedings, including, among others: that an emergency situation existed in southwestern Utah requiring at least minimal new transmission facilities to ensure against power outages in Iron and Washington counties in the 1987-88 heating season, March Order at 17 and 23, that numerous uncertainties exist regarding the long term transmission needs of southwestern Utah, id. at 23-24, that UP&L and UAMPS may each have substantial load requirements, id. at 17, that UAMPS' proposed line would subject UP&L's system and its customers to instability risks, id. at 21, and that the short UP&L line offered the most quickly constructed and the least costly option to meet urgent energy needs in Southwestern Utah while providing flexibility for future line construction by UP&L or UAMPS. Id. at 25.

STANDARDS OF REVIEW

Utah Dep't. of Admin. Services. v. Public Service Comm'n, 658 P.2d 601 (Utah 1983) sets out three standards of review which govern appeals from PSC decisions. In reviewing PSC interpretations of general questions of law, this Court gives no deference to the expertise of the PSC, but applies a correction of error standard. Id. at 608. Issues of whether the PSC acted beyond its statutory jurisdiction or violated constitutional rights would invoke such standard. At the opposite extreme, this Court gives great deference to PSC findings on questions of basic fact, with the result that such findings of fact will be upset only when they are without foundation. Id. at 609. An intermediate standard of review is applied to PSC findings which are neither purely legal nor purely factual. These findings have been characterized as "mixed questions of law and fact" or decisions on "special law"; that is, issues that involve the technical expertise or experience of the PSC. In reviewing PSC decisions in this area, this Court applies a "reasonableness test." Id at 610-611.

In the case at hand, UAMPS raised for the first time on appeal the issue of whether Section 11-13-27 of the Interlocal Act is constitutional. Inasmuch as UAMPS failed to raise this and its other constitutional issues on rehearing,

there is no PSC decision to examine, and as more fully discussed below, this Court is without jurisdiction to consider the issues in the first instance. Should this Court address this issue it would provide a correction of error standard.

UAMPS also implicitly charges that the PSC unconstitutionally applied the law by considering the impact of UAMPS' proposed line on UAMPS' members and by adopting the lowest cost construction to meet emergency transmission requirements. Should this Court determine to address this issue, it would apply the intermediate standard of whether the PSC's decision was reasonable. In so doing, this Court must give deference to the basic facts found by the PSC, which would include facts relating to the emergency energy requirements of southwestern Utah, the numerous uncertainties related to UAMPS' proposal, the impact the UAMPS' proposal would have on the reliability of UP&L's and Nevada Power Company's transmission system, and the impact of the respective proposals on the public interest generally. Having assumed the correctness of those facts, this Court must then apply the applicable law as discussed herein to determine whether the PSC's decision is reasonable.

Respondents have set out subsidiary issues which this Court may wish to consider as additional bases for denying UAMPS' appeal. The mootness question raised by Respondents is a legal question which involves no review of a PSC decision.

ARGUMENT

I. UAMPS' APPEAL SHOULD BE DISMISSED.

A. UAMPS' Failure to Challenge the Constitutionality and Application of Utah Code Ann. Section 11-13-27 on Rehearing Leaves this Court Without Subject Matter Jurisdiction to Consider this Appeal.

Utah Code Ann. § 54-7-15, as constituted when UAMPS filed its rehearing petition,[8] provided that a party aggrieved by a PSC decision was required to file a rehearing petition before appealing and that the rehearing petition must "set forth specifically the grounds on which the applicant considers [the PSC's] decision . . . unlawful." The statute presently

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[8] Utah Code Ann. Section 54-7-15 was amended by the Legislature effective January 1, 1988 and now provides: "No applicant may urge or rely on any ground not set forth in the application [for rehearing] in an appeal to any court." The amendment does not affect this appeal because UAMPS' petition for rehearing was filed on June 20, 1987, before the January 1, 1988 effective date. In Williams v. Public Service Comm'n., 754 P.2d 41 (Utah 1988) this Court indicated that the change simply served to "make the requirements more straight-forward" and is of no substantive importance. Id. at 46, n.5.

precludes a party appealing a PSC order from urging or relying on any ground not raised in the rehearing petition. Utah Code Ann. § 54-7-15(2)(b).

This Court has repeatedly held that its subject matter jurisdiction to review PSC orders is contingent upon compliance with the rehearing requirements outlined in Section 54-7-15(1). In Utah Dep't. of Business Regulation v. Public Service Comm'n, 602 P.2d 696 (Utah 1979), this Court dismissed an appeal of an issue not asserted in a petition for rehearing, explaining that:

> Where the legislature has . . . legitimately delineated jurisdictional prerequisites for this Court, we are not at liberty to tamper indiscriminately with the boundaries so drawn. The legal competence of a court to hear and decide disputes is not a function of its own discretion.

602 P.2d at 699.

More recently, in Williams v. Public Service Comm'n, 754 P.2d 41 (Utah 1988), this Court explained the sound policy underlying the requirement of a rehearing by the PSC as a condition to judicial review. It explained:

> Requiring parties to PSC proceedings to file a petition for rehearing prior to seeking judicial review provides the PSC an opportunity to correct any manifest errors in its own decisions. The PSC's expertise and

> experience in public utility regulation place it in the best position to review and expeditiously resolve any problems with its own decisions, orders, or rules. This process also conserves judicial resources by allowing some parties to obtain a resolution of their conflicts without involving the expense and time of formal appellate review.

754 P.2d at 48.

UAMPS did not challenge the constitutionality of Section 11-13-27 in its Rehearing Petition or assert that the PSC had erred in determining that the proper decisional standard was meeting the emergency power needs of southwest Utah for the next few years while leaving open future options. See supra note 1.

Not only did UAMPS not raise the principal issues here on rehearing, it maintained throughout the proceedings below that the PSC should not consider them. UAMPS first raised its constitutional challenge to Section 11-13-27 in its Original Application, wherein it stated:

> UAMPS is submitting this application under the authority of Utah Code Ann. § 11-13-27. However, UAMPS does not, by this application, concede the constitutionality of or otherwise waive its right to object to the foregoing statute.
>
> UAMPS intends to cooperate fully with the Commission in connection with the application and recognizes the need to determine

> whether the proposed transmission line is in the public interest. However, should the Application be denied, UAMPS will pursue any other means available under the law to construct and operate the line.

Exhibit "G" at paragraphs 6 and 7, Record at 008233 (emphasis added). UAMPS continued its constitutional challenge in each of its amended applications.

UP&L and the Shareholders urged the PSC to consider the constitutional challenge at the outset of the proceedings in order to avoid an unnecessary expenditure of resources should the PSC later determine that it was without jurisdiction to grant or deny UAMPS' Application or if UAMPS were to carry out its threat and ignore an unfavorable order. Shareholders' Proposal for Scheduling or Alternatively, Petition for Rehearing dated August 30, 1985, Record at 008883; UP&L's Motion for Summary Procedures and Stay of Proceedings, dated July 17, 1985, Record at 008810. UAMPS disagreed, asserting, as it claims here, that the PSC has no authority to consider the constitutionality of Section 11-13-27. See Addendum E to UAMPS Brief, Record at 008939.

UAMPS' assertion is incorrect. As the PSC concluded in its September Order, the PSC is a quasi-judicial body empowered to interpret questions of general law including

interpretations of the United States and Utah Constitutions. See also Utah Dep't. of Admin. Services v. Public Service Comm'n, 658 P.2d 601 (Utah 1983) (establishing standard of review applicable to PSC's interpretation of questions of general law, including constitutional issues); Southern Pacific Transport Co. v. Public Utilities Comm'n, 18 Cal. 3d. 308, 556 P.2d 289 (1976) (California Public Utilities Commission has authority to determine the validity of statutes); Utah Code Ann. § 63-46a-3(3) (state agencies may interpret a state or federal mandate such as the constitution during their rule-making process).

Assuming for the purpose of argument that the PSC has no ability to determine the constitutionality of Section 11-13-27, then UAMPS should not have pursued its Application before the PSC, but should have instituted a declaratory judgment action in district court as allowed by Utah Code Ann. Section 78-33-1.[9] Except in limited circumstances not

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[9] Utah Code Ann. Section 78-33-1 sets out the procedure whereby complainants may obtain declaratory relief with respect to constitutional rights and legal relations. Section 78-33-1 specifically provides that "[t]he District Courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed."

applicable here, this is not a court of original jurisdiction. Utah Code Ann. § 78-2-2. UAMPS' appeal of issues here which were not litigated below is impermissible.

B. The Line Authorized in the March Order Has Been Completed and This Appeal is Moot.

Although UAMPS sought a stay from the PSC in conjunction with its Rehearing Petition, UAMPS did not request such a stay from this Court as required by Utah Code Ann. § 54-7-17. Consequently, UP&L completed the line required by the March Order. Moreover, UP&L is in the process of constructing the larger 345 kV transmission line required by the December Order of which the 20 mile line segment is a part. UAMPS did not seek rehearing of or otherwise appeal the December Order.

An appeal is moot if "the requested judicial relief cannot affect the rights of the litigants." Jones v. Schwendiman, 721 P.2d 893, 894 (Utah 1986). The facts in this controversy are analogous to those in Black v. Aloha Financial Corp., 656 P.2d 409 (Utah 1982) where this Court held that a buyer of property who had acquiesced in a court order allowing him to avoid a forfeiture of property by paying off the balance of a contract could not appeal the decision. The court found that sound judicial policy dictates against allowing parties to

acquiesce in court orders and later seek an advisory opinion concerning whether the decision they accepted was correct. Id. at 410-11; Trees v. Lewis. 738 P.2d 612 (Utah 1987).

If this Court were to vacate the March Order, the rights of the parties to this appeal would be unaffected. The transmission line ordered by the PSC has been built and the PSC subsequently rendered an order in December granting UP&L a certificate to complete the larger line. The December Order was not appealed by UAMPS and DG&T did not perfect its appeal of the Order. Issues of joint ownership and/or use of the line as between UP&L, UAMPS and DG&T are to be resolved in a separate docket established by the December Order. Exhibit "E" at 5. Consequently, this controversy is moot and UAMPS has nothing to gain from its appeal other than an advisory opinion.

C. Although the Appeal Should be Dismissed, This Court may Nonetheless Address the Legal Issues Presented Because the Resolution of Those Issues Will Have the Same Effect as a Dismissal.

Although the appeal should be dismissed for lack of jurisdiction and because it is moot, the merits of the controversy may nonetheless be addressed. In Williams v. Public Service Comm'n, 754 P.2d 41 (Utah 1988), this Court found that although it lacked subject matter jurisdiction because of the

appellants' failure to comply with the rehearing requirement, it could nevertheless address the merits of the action, explaining:

> Although we have no subject matter jurisdiction over the administrative actions, we deal with the contentions raised therein for several reasons. First, this approach allows for the most expeditious solution to the dispute between these parties. All questions were thoroughly briefed and are fully presented to the court. . . . Finally, this approach is not without precedent. A court may reach a result on the merits if it is equivalent to the result the court would have reached in finding that it lacked jurisdiction. In so doing, the court may ignore jurisdictional issues and rule on the merits alone. Although we explicitly hold that we have no jurisdiction over the administrative actions, in our discussion of the merits, we arrive at the same result.

Id. at 49 n. 9 (citations omitted).

As explained below, Section 11-13-27 is constitutional and the PSC's application of the statute was entirely proper. Since the result will be the same whether the court disposes of this appeal on the basis of jurisdiction or on the merits, it is appropriate that the court avail itself of the extensive briefing undertaken by the parties and clarify the important issues presented.

II. UTAH CODE ANN. SECTION 11-13-27 IS CONSTITUTIONAL

Simply stated, UAMPS' claim on appeal is that Utah Code Ann. Section 11-13-27 on its face is unconstitutional because its requirement that an Interlocal Act agency obtain a certificate from the PSC prior to constructing certain electrical facilities constitutes a delegation to a special commission of power to supervise or interfere with municipal functions in violation of Article VI, Section 28 of the Utah Constitution.[10] UAMPS restates its constitutional claim a different way by claiming that the PSC violated the constitutional rights of its members by supporting its March Order with findings that UAMPS' line would negatively impact the overall public interest, including the interests of the customers of UAMPS' members. See UAMPS Brief at 15-16.

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[10] Notably, the Interlocal Act is not the only statute which extends PSC jurisdiction over governmental entities. Utah Code Ann. § 55-3-16 subjects cities and towns to PSC regulation as to any service rendered outside their boundaries in competition with an existing public utility with the exception of water works and sewer systems and water supply systems. In addition, Utah Code Ann. § 17-6-1.1 gives PSC jurisdiction over electric service districts created under that chapter.

To succeed on the merits of its constitutional claim, UAMPS must demonstrate that Section 11-13-27 is fundamentally flawed beyond redemption. This Court has long held that "[e]very presumption will be indulged in favor of legislation and only clear and demonstrable usurpation of power will authorize judicial interference with legislative action." Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530, 535 (1935). UAMPS has wholly failed in that burden.

A. UAMPS is Not a Municipality and Its Projects Impact Citizens Beyond Its Municipal Members' Boundaries.

The Utah Constitution recognizes a balance of power between municipal and legislative authority. Municipalities are not subject to regulatory supervision over their municipal functions, but they are in turn circumscribed in their activities. Article VI, Section 28 of the Utah Constitution (formerly codified at Article VI, Section 29) provides that:

> The Legislature shall not delegate to any special commission, . . . any power to make, supervise or interfere with any municipal improvement, money, property or effects, . . . or to perform any municipal functions.

On the other hand, Article XI, Section 5 of the Utah Constitution limits municipal involvement in the utility business to that which is "local in extent and use", specifically providing that cities have power to:

> [F]urnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use. . . .

Id. (emphasis added).

The constitutional scheme is coherent and logical. Decisions related to the construction of projects within city boundaries and the provision of utility service to city residents need not be regulated by separate governmental bodies such as the PSC because they affect only those who have a voice through the ballot box. In Logan City v. Public Utilities Comm'n, 72 Utah 536, 271 P. 961, 971 (1928), the case at the heart of UAMPS appeal, this Court held that Article VI, Section 28 (then Article VI, Section 29) prevented the Public Utilities Commission from establishing rates charged by Logan City because the citizens of Logan were adequately protected from unreasonable utility rates by their power to elect the officers who establish rates.

UAMPS claims that it is entitled to be free from regulation because it exercises the municipal functions of its members.[11] UAMPS' Brief at 11-14. UAMPS' claim is without merit. While its powers may coincide with those of its members, UAMPS' actions are those of a separate body politic and its actions can profoundly impact those without the power of the ballot.

This Court has consistently refused to apply the protections of Article VI, Section 28 to quasi-municipal state agencies similar to UAMPS. In Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935), the Court rejected a constitutional attack on a statute allowing for the organization of metropolitan water districts. The purpose of the statute, like that of the Interlocal Act, was to provide a new entity through which cities and towns could cooperate. Cf. Utah Code Ann. § 11-13-2. The goal of cooperation in Lehi was to allow cities to obtain a larger water supply for use by the inhabitants of

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[11] Sections 11-13-14 and 11-13-15 of the Interlocal Act require that an Interlocal Act agency or public agencies acting under the Interlocal Act undertake projects which each participating public agency is authorized by law to perform. It is apparently on the basis of these provisions, that UAMPS argues the applicability of the special commission prohibition contained in Article VI, Section 29 of the Utah Constitution.

the participating cities. 48 P.2d at 534. Plaintiffs argued that the directors of a water district created under the statute constituted an unlawful special commission authorized to exercise municipal functions. This Court disagreed, finding that even though the municipal water district acted in the interest of its participants, it exercised its own functions. The Court observed:

> The power of control vested in the board of directors is over the property, improvements, money, and effects of the district, and not that of any of the cities or towns whose territorial boundaries may be coincidental with that of the district or included therein. . . .
>
> None of the municipal functions of the component cities or towns is conferred on or delegated to the Metropolitan Water District. Each of the cities and towns will possess and may continue to exercise every municipal function it now has.

Lehi, 48 P.2d at 535.

Like the affected municipalities in Lehi, UAMPS' members are not (and cannot be) robbed of their municipal powers. Rather, they have voluntarily created a separate institution to undertake and finance certain activities on their behalf, activities which the member cities could not practically accomplish on their own. Barr at 2120.

This Court has rejected on a number of occasions constitutional claims like those presented by UAMPS on the basis that municipally-created entities are not municipalities carrying out municipal functions. See Branch v. Salt Lake County Service Area, 23 Utah 2d 181, 460 P.2d 814 (1969) (special improvement districts do not carry on municipal functions, but conduct operations distinct from their members even when their borders are contiguous with their members); Freeman v. Stewart, 2 Utah 2d 319, 273 P.2d 174 (1954) (sanitation districts are not entitled to protections granted to municipalities under the Utah Constitution); Tygesen v. Magna Water Co., 119 Utah 274, 226 P.2d 127 (1950) (improvement districts established to operate water and sewage treatment facilities are separate arms of the government and do not exercise municipal functions); Tribe v. Salt Lake City, 540 P.2d 499 (Utah 1975) (redevelopment agency does not carry on municipal functions); Salt Lake City v. International Ass'n of Firefighters, 563 P.2d 786 (Utah 1977) (statute which required arbitration of disputes of municipal firefighters was not a special commission interference inasmuch as fire protection is not a matter of purely local concern); see e.g., Municipal Bldg. Auth. v. Lowder, 711 P.2d 273 (Utah 1985) (city building authority is not a special commission, but rather a quasi-municipal government entity);

Lehi City v. Meiling, 48 P.2d at 548, (Wolfe, J., concurring) ("the building of an immense project to serve many cities is in itself of a magnitude and character as to take it out of the category of municipal functioning. It is certainly not the ordinary function of a municipality . . . to construct immense engineering projects for the bringing of water from long distances").

A rationale frequently given for validating "quasi-municipal" state agencies like UAMPS, is that such agencies engage in activities of statewide concern. For example, in Tribe v. Salt Lake City, 540 P.2d 499 (Utah 1975), the court considered a claim that the Redevelopment Agency of Salt Lake City (created by Salt Lake City pursuant to the Utah Neighborhood Development Act) constituted an unconstitutional special commission with authority to perform municipal functions. The court disagreed, finding that the Redevelopment Agency was designed to combat the statewide problem of urban blight, and therefore did not serve a solely municipal purpose. The court noted:

> [Article VI, Section 28] applies only to municipal functions, the performance of which are constitutionally limited to the units of local government. The problem of "urban blight" we recognize as one of statewide concern, and not merely a local or

> municipal problem. The agency for that reason does not run counter to Article VI, Section 28. The agency is a quasi-municipal corporation, a public agency created for beneficial and necessary public purposes. It is not a true municipal corporation, having power of local government, but an agency of the state designed for state purposes.

Id. at 503 (emphasis in original). Just as the problem of "urban blight" is a matter of state-wide concern, the impacts of UAMPS' proposal (such as possible blackouts and electrical disturbances) is of great consequence to the residents of Utah, a mischief that necessarily extends beyond municipal boundaries. See supra note 7; March Order at 21.

The legislature recognized that the utility projects of Interlocal Act agencies may impact all citizens of the state within the provision granting PSC authority to grant or deny a certificate. Section 11-13-27 provides that before constructing an electrical facility, an Interlocal Act agency shall first obtain a certificate from the PSC that public convenience and necessity requires the construction and that it will not impair the public convenience and necessity of "electrical consumers of the state of Utah at the present time or in the future." Id. (emphasis added). Similarly, the purpose of the

Interlocal Act is to allow local governments to act in a manner that promotes the "general welfare of the state." Utah Code Ann. § 11-13-2.

The proceedings below vindicate the legislature's concern that the interests of all Utah citizens should be considered prior to construction of Interlocal Act projects. The case was initiated to respond to the BLM's environmental concerns relating to two applications for a right of way to build a large high voltage transmission line through public lands. March Order at 2. The assumption underlying the proceedings was that it would not be in the best interest of the state to allow two high voltage transmission lines capable of serving the same or similar electrical loads traversing one-half of the state. To that end, the proceedings focused on the public policy issues raised by UAMPS and others. Many hearing hours were dedicated to a debate of the potential hazardous impact of UAMPS' proposed line on UP&L's existing system. Tucker at 2770-2800; Clark at 2681-2691. See supra note 7. One party dedicated its entire involvement in the proceedings to issues of competition and numerous witnesses testified on the competitive impact of each proposal, including

the opportunities that would be afforded UAMPS to "cream skim" UP&L customers to the detriment of UP&L's remaining customers.[12] See Position Statement of the Utah Attorney General Regarding Competition Issues dated May 16, 1986, Record at 010931; Schlesinger at 1874-1976; Pierce at 7071-7073; Faigle at 4634-4638; Kumar at 3839-3845; Bryner at 6415; Compton at 1605-1611. Testimony was also elicited as to the in-state and out of state surplus sale opportunities which would be made available by the parallel proposals (Arlidge at 3732-3734; Millett at 2984-2985; Bryner at 6375-6378) and the relative cost and benefit of each proposal to Utah ratepayers generally. Pierce at 7131-7137. Additionally, evidence was given with respect to the effect of each proposal on the state and local tax base, as well as the federal treasury. Colby at 3962-3966; Droubay at 3905-3906 (In 1985 the Company paid $10 million dollars in Utah franchise taxes and $45 million dollars in

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[12] UAMPS' witness Compton defined cream skimming as UAMPS taking UP&L's most lucrative customers while leaving UP&L to serve the higher cost rural areas in southern Utah. Compton at 1606. He agreed that UAMPS' proposal could be used for cream skimming. Id. at 1606-1610. If such cream skimming occurred, UP&L's remaining customers would bear the fixed utility costs otherwise paid by the customers taken by UAMPS. Klepper at 5100.

property taxes); McNeil at 2405-2406 (McNeil did not know whether UAMPS would pay in lieu of ad valorem property taxes and would not say whether the issue would be presented to UAMPS' board of directors).

The record amply demonstrated that electrical projects of a conglomeration of cities may have enormous impacts on the state as a whole, including the great majority of citizens who have no voice whatsoever in approving or disapproving such projects. PSC intervention in such projects is not only lawful, but serves an important public policy.

B. The Type of Activities UAMPS Indicated It Intended to Engage in Does not Warrant an Application of the Constitutional Limitations That Would Apply to a Municipality Standing Alone.

Critical issues in the proceeding below concerned the type of activities UAMPS may engage in once the transmission line was constructed. While the March Order did not address those issues, the fact that they may exist and "impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future" is an additional reason for the Court to find Section 11-13-27 constitutional.

In adopting Section 11-13-27, the Legislature recognized that an inter-local cooperative agency such as UAMPS that

intends to build large transmission or generating projects in Utah, has the possibility of seriously affecting other utilities in Utah, and in particular UP&L and its customers which constitute approximately three-fourths of the electric consumers of Utah.

The impact a city or an inter-local cooperative agency could have beyond its borders was recognized in State Water Pollution Control Board v. Salt Lake City, 6 Utah 2d 247, 311 P.2d 370 (1957). In construing the Water Pollution Control Act as being constitutionally consistent with Art. VI § 29, the Court recognized that once sewage goes beyond the boundaries of the municipality, regulation by the Water Pollution Control Board does not run afoul of the constitutional provision relating to the city's independence of internal operations enumerated in Art. VI, § 29. In that decision, the Court stated:

> It is to be noted that we are here dealing specifically with respect to the problem of sewage disposal within Salt Lake City, and as affecting the inhabitants thereof. It is obvious that a community might so handle its sewage as to constitute a menace to the health of other communities or inhabitants of the state, e.g. by letting it escape into streams, or lakes or springs which form their head waters so that it would affect lower users. This is undoubtedly the reason for the general language in the statute

> granting the Water Pollution Board its power to guard against pollution of 'all . . . bodies . . . of water, . . . contained within . . . this State . . .' If the statute is so construed, the Board is endowed with authority to supervise and regulate such matters where they are conducted in a manner which threatens pollution of waters beyond the confines of the city. Such interpretation does not run afoul the constitutional provision herein above discussed relating to the City's independence of internal operation and is in accord with the well-established rule of constitutional law that where there are two alternatives as to the interpretation of a statute, one of which would make its constitutionally doubtful, and the other would render it constitutional, the latter will prevail.

Id. at 375.

As stated previously, the construction of the proposed transmission line by UAMPS would have affected the reliability of the UP&L transmission system. The impact caused by UAMPS' proposed transmission line on UP&L's customers is similar to the sewage from Salt Lake City going beyond the borders of the City and effecting the water of the State generally. The court in Water Pollution Control Board read as constitutional the regulation of the sewage beyond the confines of the City. In this case, the Court should read as constitutional the regulation of UAMPS beyond the borders of its member municipalities.

Article XI § 5 of the Utah Constitution empowers municipalities to "purchase, hire, construct, maintain or lease public utilities local in extent and use." Significant evidence was presented at the hearings below that indicated that the types of activities UAMPS may engage in with their transmission line are the types of activities that would effect other citizens of the state of Utah besides its members. UAMPS' original application for a certificate of convenience and necessity (Exhibit "G") indicated the intentions of UAMPS as noted in the facts. See Statement of Facts at 7-8.

It is clear that a municipality is limited in its power to buy and sell its product. In County Water System v. Salt Lake City, 3 Utah 2d 46, 278 P.2d 285 (1954), the Court considered whether the PSC could regulate a city's sale of surplus water beyond its corporate limits. The plaintiff water company argued that if the city were allowed to sell water beyond its limits without PSC control, the city could then subject non-municipal residents to exorbitant rates and engage in unfair and discriminatory distribution and competition with a regulated industry. 278 P.2d at 288. Notwithstanding these concerns, the Court found that the constitutional proscriptions against subjecting municipalities to special commissions precluded the PSC from exercising jurisdiction. In recognizing

the mischief resulting from the city's unrestricted utility business, the Court strictly construed statutes authorizing cities to sell surplus commodities stating:

> [T]he fears expressed by plaintiffs that cities will engage in the utility business on a broad scale in competition with and destructive of regularly authorized, privately owned utilities does not seem to be justified. Such activities are neither contemplated nor authorized law; they have no authority to sell water outside the city limits except as expressly permitted by statute, which to sell the 'surplus product . . . not required by the city or its inhabitants.'
>
> But such permissive sale of surplus water is clearly not calculated to permit the city to purchase water solely for resale, nor to construct, own or manage facilities and equipment for the distribution of water outside of its city limits as a general business; the intent is obviously to permit it to do those things only to the extent incidental to the development and use of water for present requirements and those reasonably to be anticipated in connection with the expected growth of the city.

Id. at 289-90.

The types of activities contemplated by UAMPS with its proposed transmission line go beyond the activities contemplated by County Water Systems, and effect the public convenience and necessity of UP&L's customers. This Court can

read Section 11-13-27 as a legislative recognition that the acts UAMPS could have engaged in and the effects that its proposed transmission line could have on others is not constitutionally protected from review by the PSC as contemplated by Article VI, § 28 of the Utah Constitution.

In conclusion, the Respondents urge the Court to recognize that the activities UAMPS may have engaged in, if they had built their proposed transmission, would effect the public interest of other consumers in the state. The Legislature in adopting Section 11-13-27 recognized that when an Interlocal Act agency builds a transmission line or generating plant, that it could effect other consumers in the state and established the PSC to review the impact that such a project would have on the state. Such broad state-wide impacts such as those that could occur from a project such as this transmission line go well beyond the corporate limits of any individual municipality and are validly subject to the regulation of the PSC as contemplated by Section 11-13-27.

C. The Logic Which Would Protect UAMPS From Special Commission Regulation Would Also Destroy UAMPS as a Legal Institution.

If UAMPS' premise is accepted that it is free from PSC regulation because it exercises the municipal functions of its

members, then the conclusion that logically follows is that UAMPS itself is an unlawful special commission. UAMPS is a corporate entity separate from its municipal participants. Its projects are determined by a board of directors which is not elected by the residents of UAMPS' members, but is selected by the representatives of those members pursuant to UAMPS' bylaws. Not all UAMPS' members are represented on the board of directors, and decisions may be made on the basis of a vote of less than all of the board members. See Article VI of UAMPS' Bylaws attached as Exhibit "J".[13] Decision-making is far removed from the citizens served by UAMPS' members and its system of government certainly does not provide the protection of ballot power described in Logan City v. Public Utilities Comm'n, 72 Utah 536, 271 P. 961 (1928). The necessary conclusion of UAMPS' theory that it is free from PSC regulation

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[13] Article IV, Section III of UAMPS bylaws provides that the four parties having the greatest financial obligations shall automatically be entitled to have their representatives serve as directors and shall be deemed elected. The remaining 11 members are elected by representatives from each constituent member. See Agreement for Joint and Co-Operated Action Attached to Addendum "D" of UAMPS' brief. A quorum for the transaction of board business may consist of four members and a majority of them may take action except with respect to the amendment of the cooperation agreement which requires approval by two thirds of UAMPS members. At the time UAMPS submitted its Amended Application, UAMPS consisted of 22 members. Exhibit "E" to Addendum "D" of UAMPS' Brief.

because it performs municipal functions, is that UAMPS' board of directors constitutes a special commission, inasmuch as it is composed of non-municipal entities authorized to make decisions pertaining to municipal improvements and functions.[14] Respondents do not adhere to the theory, but urge the Court to recognize that if it rules with UAMPS' constitutional claim it must also rule that UAMPS is an unconstitutional organization.

D. If Section 11-13-27 Falls, Then so Must the Provisions of the Interlocal Act Authorizing UAMPS to Construct its Proposed Transmission Facilities.

UAMPS' constitutional claim is also self defeating in light of principles governing the severability of statutes. The Interlocal Act was amended in 1977 principally to authorize Interlocal Act agencies to finance and construct electric transmission and generation facilities. See 1977 Utah Laws

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[14] In the majority of cases involving a challenge under Utah Const. Article VI, Section 28, the complaint was directed at the quasi municipal state agency and/or its governing body as the offensive special commission. See Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935), Municipal Bldg. Auth. v. Lowder, 711 P.2d 273 (Utah, 1985), State Water Pollution Control Bd. v. Salt Lake City, 6 Utah 2d 247, 311 P.2d 370 (1957).

Ch. 47, § 3 attached as Exhibit "K." As a condition to the exercise of such authority, the Legislature required that an Interlocal Act agency obtain a certificate of convenience and necessity from the PSC. Utah Code Ann. § 11-13-27. The Act contains no severability provision.

The rule of law in Utah is that a constitutionally offensive statutory provision may only be severed if the remaining portions of the statute can implement the legislature's intent without the stricken portion, Salt Lake City v. International Ass'n of Firefighters, 563 P.2d 786 (Utah 1977), and the offending portion of the statute is not interrelated with the inoffensive portions of the statute, Pride Oil Co. v. Salt Lake County, 13 Utah 2d 183, 370 P.2d 355 (1962). UAMPS has not attempted to show that severing Section 11-13-27 from the Interlocal Act would survive either of these tests, and Respondents submit that it would be impossible to do so.

The legislative purpose of the Interlocal Act includes the "utilization of natural resources for the overall promotion of the general welfare of the state." Utah Code Ann. § 11-13-2. When competing interests vie for scarce state resources, such as transmission line corridors, certificates of convenience and necessity protect the state's interests in such limited resources. **Cf.** Utah Code Ann. §§ 11-13-27, 63-53-1. Certifi

cates are the cornerstone of utility regulation and are integral to the legislative scheme regarding the long distance transmission of electricity by Interlocal Act agencies.

Section 11-13-27 is plainly related to the other provisions of the Interlocal Act, particularly the 1977 amendments (of which it was a part) which authorized such agencies to finance and construct electric transmission and generation facilities. When the legislature required PSC approval as a condition precedent to a political subdivision's exercise of a new and expansive authority to affect this state's resources, tax base, competitive relationships, and electrical reliability, it is presumed that the legislature considered such approval to be critical to the exercise and therefore the existence of such power.

If this Court were to find that Section 11-13-27 is unconstitutional it must also strike the remaining 1977 amendments to the Interlocal Act.[15] Respondents do not encourage the far-reaching consequences of this interpretation, but

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[15] The Intermountain Power Agency has built and is in the process of completing a massive generating facility pursuant to the authority of the 1977 amendments to the Interlocal Act. A determination that the 1977 amendments are unconstitutional would not affect the legality of that project inasmuch as the legislature exempted the project from the requirements of § 11-13-27. Section 11-13-27, as enacted in 1977, provided that: (cont.)

continue to be amazed that UAMPS is willing to flirt with disaster for itself and other projects.

III. SECTION 11-13-27 WAS CONSTITUTIONALLY APPLIED BY THE PSC.

On the same theory that it bases its facial attack on Section 11-13-27, UAMPS argues that the PSC unconstitutionally applied Section 11-13-27. UAMPS complains that because the PSC's decision was based on such factors as the need for the line, the type of construction and operation, UAMPS' ability to finance and operate the line, the effect of the project on the overall public interest (including the ratepayers of UP&L), and because the PSC chose the lowest cost alternative to meet the emergency energy needs of southwest Utah, the PSC interfered

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15 (cont.)

> This section shall become effective for all projects initiated after the effective date hereof, and shall not apply to those for which feasibility studies were initiated prior to said effective date.

Feasibility studies for IPP were initiated prior to the statute's effective date, and IPP therefore is not subject to the certificate requirement. See Barr at 2162.

with municipal functions in contravention of the Utah Constitution. UAMPS Brief at 15-20. UAMPS' Brief echoes the view of its chief officer that the electrical needs and desires of UAMPS members and their decisions to make unreasonable choices is none of the PSC's business. McNeil at 2347-2348. UAMPS is wrong. The activities of Interlocal Act agencies, particularly those proposed by UAMPS, affect the well being of all citizens of the state and UAMPS is not free to make choices, reasonable or unreasonable, without PSC oversight.

Moreover, UAMPS' argument ignores two essential principles. The first is that by legislative fiat, the PSC must consider the public interest, which includes the interests of all Utah citizens. The second is that where sufficient factual findings support an agency decision, the decision must be sustained.

A. The PSC has a General Statutory Mandate to Consider the Interests of all Utah Citizens.

The Utah Legislature set out Utah's energy policy in Utah Code Ann. § 63-53-1, as follows:

> (a) Energy resources are essential to the health, safety, and welfare of the people of Utah and to the economy of the state. It is the responsibility of state government to conserve energy resources and

> to insure that a supply of energy adequate to meet basic needs is maintained for protection of public health and safety and for promotion of the general welfare.
>
> . . .
>
> (c) State and national energy resources require effective management, including both conservation and development. The development of the state's resources should be based on a recognition of the finite nature of human, financial and natural resources and of the land's limited ability to absorb the impacts of large-scale developments.
>
> **(d)** Maximum and timely public participation and coordinated government involvement at every significant stage of the decision-making process involving energy use and development will help avoid unnecessary delays and are essential to the protection and representation of the public interest.
>
> (e) Present practices relating to the location of major energy facilities should be improved so that the costs of development may be fully and equitably weighed against the benefits resulting therefrom.

Section 11-13-27 promotes the energy policy of the state to coordinate and manage energy development in light of the finite financial, natural and land resources available for large scale developments, by directing the PSC to consider the interests of "electrical consumers of the state of Utah at the present time or in the future" in its decisions on certificate applications. This is not simply a requirement of the Inter

local Act. Any time the PSC is asked to issue a certificate of convenience and necessity (usually to a private utility), it must consider the interests of the entire state, including the customers of a municipal utility. See March Order at 21-23; Utah Code Ann. § 54-4-2; cf. supra note 10. In Mulcahy v. Public Service Comm'n, 101 Utah 245, 117 P.2d 298 (1941), this Court held that the Commission should consider the welfare of not only the people of the territory affected "as a whole," 117 P.2d at 301, but also of the people of the state "as a whole." 117 P.2d at 305. The fact that the PSC made explicit findings in this case relative to UAMPS does not invalidate its decision.

B. Findings Unrelated to UAMPS are Sufficient to Support the March Order.

As discussed above, the PSC made numerous factual findings, some of which specifically refer to UAMPS' members, but most of which applied generally to the citizens of Utah and consequently, the public interest. The principal rationale supporting the March Order is the PSC finding that an emergency situation existed in southwestern Utah which UP&L was most capable of immediately rectifying (while leaving future options open for UP&L and UAMPS transmission projects), and that UAMPS' proposed line could subject UP&L's transmission system (and consequently its customers) to system instability. March Order

at 17, 23, 21 and 25. Either of these findings standing alone sustains the March Order. Neither of the findings relate solely to an impact on UAMPS' ratepayers. The March Order is firmly founded in cognizable evidence and is consistent with the PSC's legal mandate to act in the public interest. See Utah Dep't. of Admin. Services v. Public Service Comm'n, 658 P.2d 601, 613-14 (Utah 1983); Uintah Freightways v. Public Service Comm'n, 15 Utah 2d 221, 390 P.2d 238, 240 (1964).

CONCLUSION

In sum, this appeal may be dismissed on the ground that UAMPS has failed to raise issues asserted before this Court in its Rehearing Petition and has allowed the controversy to become moot because of its acquiescence in the construction of the line ordered in the March Order from which UAMPS appeals. However, Respondents urge this Court to take the opportunity to reach the substantive issues and resolve those issues in accordance with the presumption of constitutionality and this Court's previous case law and hold that Section 11-13-27 is a valid exercise of legislative prerogative and was properly interpreted and applied to UAMPS by the PSC.

DATED this 17th day of October, 1988.

PUBLIC SERVICE COMMISSION OF UTAH

By Laurie L. Noda
David Stott, Esq.
Laurie Noda, Esq.
Special Assistant Attorney Generals

DIVISION OF PUBLIC UTILITIES

By Michael Ginsberg
Michael Ginsberg, Esq.
Assistant Attorney General

UTAH POWER & LIGHT COMPANY

Thomas W. Forsgren
By Sidney G. Baucom, Esq.
Thomas W. Forsgren, Esq.
Edward A. Hunter, Jr., Esq.

UTILITY SHAREHOLDERS ASSOCIATION OF UTAH

By Donald B. Holbrook
Donald B. Holbrook, Esq.
Elizabeth M. Haslam, Esq.
Sharon E. Sonnenreich, Esq.
Jones, Waldo, Holbrook & McDonough

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing Brief of Respondents Public Service Commission of Utah, et al., to be mailed, postage prepaid, this 11th day of October, 1988, to the following:

James A. Holtkamp
Van Cott, Bagley, Cornwall, & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145
Attorneys for Petitioner
Utah Associated Municipal Power Systems

upl66/ses/cs

Exhibit A

EXHIBIT "A"

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of the UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS for Issuance of a Certificate of Convenience and Necessity Authorizing the Construction of a Transmission Line in Southwestern Utah.	CASE NO. 85-2011-01
In the Matter of the Proposed Construction of Transmission Facilities by UTAH POWER & LIGHT and/or UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS and DESERET GENERATION AND TRANSMISSION COOPERATIVE and ST. GEORGE CITY.	CASE NO. 85-999-08 REPORT AND ORDER AUTHORIZING INTERIM SOLUTION TO SOUTHWEST UTAH TRANSMISSION CAPACITY REQUIREMENTS

ISSUED: March 3, 1987

Appearances:

Sidney G. Baucom Thomas W. Forsgren Rosemary Richardson	For	Utah Power & Light Company
Michael Ginsberg, Assistant Attorney General	"	Division of Public Utilities, Department of Business Regulation, State of Utah
James A. Holtkamp S. Robert Bradley	"	Utah Associated Municipal Power System
Donald B. Holbrook L. R. Curtis, Jr. Elizabeth M. Haslam	"	Utility Shareholders Association of Utah
Lynn Mitton	"	Deseret Generation & Transmission Cooperative
David Christensen, Assistant Attorney General	"	Utah Energy office
Patrick J. Oshie, Assistant Attorney General	"	Committee of Consumer Services

By the Commission:

The origins of this case are found in a letter, dated January 16, 1985, to this Commission from the U.S. Bureau of Land Management, notifying the Commission that two entities were seeking approval to construct transmission lines traversing public lands into Washington County, and requesting Commission analysis of the necessity for the lines. These were the Utah Association of Municipal Power Systems, "UAMPS" (for itself, Deseret Generation and Transmission Cooperative, "DG&T," and the City of St. George) and Utah Power and Light Company, "Utah Power." The Commission established Case No. 85-999-08, an investigative docket, after finding that its information was "insufficient either to respond to the questions asked by the Bureau of Land Management or for a potential regulatory response should either or both parties seek approval for such construction..." This case was necessitated in part by Utah Power's protest of the UAMPS proposed transmission construction and Utah Power's initial refusal to file an affirmative case supporting its own proposed transmission project in the 85-999-08 docket. On August 2, 1985, in compliance with Section 11-13-27 UCA, as amended, UAMPS filed an application seeking a certificate of public convenience and necessity from this Commission, authorizing construction of transmission facilities. The matter was set for hearing and assigned Case No. 85-2011-01. These dockets were consolidated and Utah Power agreed that its response to the UAMPS application would amount to an affirmative case for its own

project. At that point, the transmission project was linked with the proposed sale by Utah Power of 100 MW of Hunter Unit No. III to Nevada Power Company, a sale requiring interconnection with Nevada via a new 345 kV line. Utah Power's application for Commission approval of the plant sale was filed on January 10, 1986, and Docket No. 85-035-08 was established for the purpose of considering such approval. Following the decision to consolidate 85-2011-01 with 85-999-08, the Commission denied a motion to combine the 85-035-08 case with these transmission cases. We approved the sale and notified the parties that their presentations and our deliberations in this case would be based on that approval.

During months of public hearings initiated on October 14, 1985 and following at intervals thereafter until February 11, 1987, a voluminous record was produced upon which the Commission would base its decision. Subsequent to the time the record was closed but during the pendancy of Commission deliberations, events occurred which rendered that record seriously incomplete. The first of these, the failure of Utah Power to complete sale of plant capacity to Nevada Power Company, owing to the decision of the Nevada Public Service Commission, dated October 13, 1986, Docket No. 86-702, undermined the value of the record by altering a fundamental assumption, plant sale to Nevada, upon which it was based. The second, Commission approval in Mountain Fuel Supply Company Case Nos. 86-2016-01, 86-057-03, 86-091-01, and 86-2019-01 of natural gas transmission to and distribution within

southwestern Utah--the area of concern in this present case--dictated that the estimates of area electricity load used to justify in part the requested new investment in transmission, the subject of this case, should be changed accordingly. Such changes in electricity load could well affect not only the size but also the timing of transmission investments. In fact, because of these events many of the parties' contentions which fill the case record are now moot. Because of the incompleteness of the record as to the current factual situation, the decision was made to obtain more information. By Order of February 5, 1987, containing many questions to which the Commission sought answers, the hearing was reopened on February 11, 1987 for one day.

These two factors, along with the high degree of uncertainty concerning future developments and transmission needs (e.g., a future Nevada interconnect, the Inland Intertie, possible plant or firm power sales to the Nevada or California markets, Southwestern Utah load growth, etc.), support a short-term solution to deal with the emergency of providing power by the 1987-1988 heating season. This will allow time for uncertainties to be resolved and for better information to be developed so that a proper final solution to long run transmission requirements can be determined.

From the very beginning of this proceeding and as recently as the February 11, 1987 hearing day, the Commission has been encouraging a negotiated settlement of this case. We have

done so because of the extremely complicated issues involved (transmission system engineering, system reliability, stability, and capacity, financial impacts, cost, the presence of Utah Power and UAMPS customers in the same geographic area, the long-standing conflict between Utah Power and some UAMPS' member municipalities, legal considerations) and our belief that a negotiated settlement would foreclose protracted Commission hearings. Also, we had reason to believe that any order in the case would be appealed and thought settlement would avoid lengthy, unproductive legal battles. The ultimate losers in such battles would be the electrical power consumers of Utah, and particularly southwestern Utah, regardless of who serves them. Discussions among parties, however, did not yield a settlement proposal.

Knowing that all parties anxiously await the Commission's disposition of the case, we have determined to enter this report and order, dealing with the emergency situation, containing a statement of rationale and setting forth the order based thereon.

DISCUSSION

In this case, we are asked to decide whether to issue a certificate of public convenience and necessity permitting UAMPS to construct a large, high voltage transmission line, specifically, a 230 kV line from the IPP plant to a new substation near the major Washington County load center. We must base this decision on our analysis of the need for the line; character-

istics of construction and operation of it; UAMPS' ability to finance, construct, and operate the line; the effect of the project on the overall public interest, including the ratepayers of Utah Power, the customers of UAMPS' member municipalities, and the members of DG&T.

Utah Power has protested the UAMPS application and has filed for Commission approval of its own affirmatively supported transmission line construction proposal. In evaluating Utah Power's proposal, we must consider all of the factors noted above in reference to UAMPS' application, but from Utah Power's perspective. We must determine, therefore, whether the public interest requires both projects or just one, and if the latter, which to select and whether such single transmission line should be built and operated by the approved applicant alone or jointly in some fashion by both UAMPS and Utah Power.

The history of operations of Utah Power and UAMPS, and of the relationship between them, has a direct and material bearing on the decisions we will make in this case. For this reason, that history will be briefly recounted here.

With the exception of areas served by municipal utilities and by rural electric cooperative associations, Utah Power generally provides electricity throughout the state. The privately-owned company serves approximately 75 percent of all Utahns. During the 1970's Utah was recording unusually strong and sustained economic and population growth. Concommitantly, electric load was increasing very rapidly and expectations were

that such growth would continue into the indefinite future. During this period, Utah Power sought permission to construct plant sufficient to meet forecast load growth. Permission was granted. Large-scale construction had an immediate, continuing, adverse affect on electricity prices. Electric rates increased dramatically, and for several years during that period no end to rate increases was in sight. This was particularly true because the rate of inflation and the cost of money escalated to unheard of heights. It was an expensive time to undertake massive utility investment in new plant, but such investment was thought to be unavoidable.

In spite of the upward movement of electricity prices, utilities in Utah (and in the industry generally) routinely forecast large gains in demand for electricity. Utah's retail rural electric cooperatives joined to form a wholesale cooperative (DG&T) and sought to construct their own power plants. Earlier, Utah's municipal utilities formed an Interlocal Cooperative Act organization (Intermountain Power Agency) to do the same. Then, in an attempt to reduce potential demand associated with Utah Power's wholesale customers, in 1979, in Case Nos. 7167, 76-035-06, and 78-035-14, the Commission accepted a stipulation of the parties and ordered an end to Utah Power's wholesale for resale sales. Because much of Utah's dramatic growth during that period was centered in Utah Power's wholesale customers and because the rates under which Utah Power served them were established by the Federal Energy Regulatory Commission

(FERC) on the basis of utility system average costs rather than the higher incremental cost of new plant, it was determined that continued wholesale sales unduly burdened Utah Power's jurisdictional retail customers.

When it ordered an end to wholesale sales, the Commission encouraged the FERC-jurisdiction customers to find their own sources of electricity, stating that one way would be for them to participate, through ownership, in Utah Power's plants, thus assuming their share of incremental plant costs. Thus, in 1980, DG&T purchased a portion of Utah Power's Hunter plant complex (Hunter Unit II). In October 1980, UAMPS was formed for the explicit purpose of purchasing from DG&T a portion of its ownership interest in Hunter Unit II.

Since that time, load growth expectations have not been realized. This has resulted in excess generation capacity in Utah Power's system. Therefore, the prohibition on wholesale sales for resale is not currently reasonable and such sales are to be encouraged.

The operating relationship between Utah Power and DG&T-UAMPS has been an uneasy one. This has extended to transmission of electricity from Hunter II. Although transmission difficulties have roots other than this, extending to Utah Power's transmission to Utah entities of Colorado River Storage Project preference power and including the fact that the wheeling of power is priced at rates set by FERC, a key point in this case is an accusation that the lack of close cooperation between Utah

Power and UAMPS makes pooling and dispatch of UAMPS resources unreasonably difficult and costly to its members. A major, and it may be the fundamental, reason for the UAMPS application to construct, own, and operate a transmission line is its resultant desire for independence. UAMPS argues this independence would serve three UAMPS objectives: first, it would be a step toward helping UAMPS move power among its members in an economic fashion; second, it would improve UAMPS' ability to obtain sources of power from outside Utah; and third, it would eliminate UAMPS' dependence on Utah Power for wheeling. All three objectives, UAMPS argues, must be met in order to achieve efficient operation.

Thus, UAMPS' efforts to secure the ability to transmit power at their own discretion and free of what they perceive as undue and unreasonable intervention and interference by Utah Power, and at costs which they view as being fixed and therefore completely in their own control, is one of the primary driving factors in this case. In fact, it appears that UAMPS is willing to incur considerable cost over and above FERC mandated wheeling rates on a wholly-owned Utah Power system in order to acquire benefits associated with ownership of transmission facilities. It appears that UAMPS hopes for lower overall costs, at least in the long run, to be achievable from at least three different sources:

1. Improved ability to dispatch "UAMPS pool" power in a manner which minimizes total generation, transmission,

and distribution costs for all UAMPS members. They believe that current Utah Power wheeling practices prevent such optimizing and result in unnecessary and unjustified costs attached to such dispatch. These costs are seen as being so onerous that they render impractical what would otherwise be efficient practices. Ownership of facilities is seen by UAMPS as the only feasible way to correct this situation.

2. Improved ability to access low-cost, out-of-state generation (plant, firm power, or surplus power purchases). UAMPS contends that Utah Power wheeling practices freeze them out of these markets and unjustifiably prevent a decrease in UAMPS members' power and energy costs.

3. The ability to engage in sales of plant, firm power, or surplus power to non-UAMPS member utilities in or out of the state of Utah.

UAMPS believes that Utah Power operates its in-state transmission monopoly in such a manner as to freeze UAMPS members out of these three types of transactions and thereby forces these entities to operate at higher costs than could be achieved under a more favorable transmission access and costing regime. UAMPS believes that the generation cost savings, combined with the revenues to be earned in off-system markets would, at least in the long run, offset the high cost of building and operating their own transmission facilities.

This belief is further supported by UAMPS' avowed desire for independence from Utah Power, per se. UAMPS representatives have frequently asserted that they would be willing even to accept overall higher total costs of operation in order to free themselves of what they clearly perceive as unreasonably limiting Utah Power policies and practices.

Utah Power, on the other hand, is the utility we have certificated to serve generally the geographic area of concern in this case. It, therefore, has the rights, obligations, and responsibilities attendant to its position as a regulated provider of a vital public service. It must at all times be ready, able, and willing to serve within its certificated territory. UAMPS has no such requirement to serve its members. To meet its obligations, Utah Power must maintain a fully adequate investment in plant and equipment, including transmission facilities--enough plant to provide service demanded both today and tomorrow. Its rates are set not to recover these costs from the specific customers to be served, in this case those in southwest Utah, but are averaged over the entire system. Until the ban on wholesale sales for resale, Utah Power's system planning included the projected requirements of such FERC-jurisdiction customers as St. George City and other municipalities intent on establishing municipal utilities.

Utah Power contends that many UAMPS members already enjoy the advantage of low cost, subsidized federal hydropower. They state it would add to their ratepayers' disadvantage to

allow UAMPS unfettered access to low cost (or below cost) power from outside Utah, especially when both Utah Power and DG&T have excess capacity within the state. At least some of that excess capacity, Utah Power argues, resulted from projections that included UAMPS' members needs.

Because of these factors, Utah Power objects to the UAMPS application, arguing that in concept, the application is inappropriate and, if carried forward as proposed would be harmful to Utah Power and the 75 percent of Utah consumers who are its ratepayers. In addition, Utah Power argued UAMPS could not meet the burden of proof required for grant by the Commission of the certificate.

As for its own transmission project, Utah Power recited its qualifications, its position as a regulated utility, its abilities to finance and construct large projects, and more. The fundamental requirement for the certificate, both UAMPS and Utah Power agree, is need, and both agreed that need exists. The original demonstration of need, however, presumed a Nevada interconnection permitting sale of plant capacity by Utah Power as well as participation in the broader market for purchases of power and surplus sales, and therefore addressed a 345 kV line.

RATIONALE AND FINDINGS

As the basis for the decisions reached in this case, the Commission relies on the information set forth in the following paragraphs numbered 1 through 6. Collectively they form the Commission's rationale. The information presented is derived

where necessary from the case record and is the result of Commission analysis and deliberation. These paragraphs contain only such information as the Commission deems required to support the conclusions reached herein and interim solution ordered.

1. Several Material Factors Affecting Need, Timing, and Size of Southwest Utah Transmission Construction are Uncertain. These factors include:

a. Load growth in southwest Utah, and the impact on load growth of natural gas service in the area.

b. Possible future sales of plant or firm power by Utah utilities to Nevada or California utilities.

c. Decisions by current and future municipal utilities regarding power sources, including their power and energy relationships with Utah Power and UAMPS, particularly as these decisions affect future load delivery responsibilities in the area.

d. FERC rulings regarding pricing of wheeling services by Utah Power, especially as regards rolled-in rates versus distance-dependent or construction-cost-dependent rates.

e. Possible development of the Inland Intertie (or other regional transmission system developments) and their implications for service to southwest Utah.

f. Future development in the regional power market, including the impact on these markets of changes

in oil and gas prices, particularly as these changes affect the quantity of surplus sales Utah utilities may be able to make to Nevada and California utilities and the margins that can be earned on such sales.

g. UAMPS' ability to secure tax-exempt bond financing for a major project like the IPP to Washington County line, and particularly a line which may involve shared ownership or usage.

We have found these issues unusually difficult to deal with in this proceeding. With the future unfolding of events, we expect many of them to be resolved prior to additional transmission construction being required and this Commission issuing an additional order or orders permitting such additional construction.

2. At the Close of the February 11, 1987, Proceeding the Commission had before it Several Alternatives.

In identifying and evaluating the options to be considered, the following definitions were set forth in the February 5, 1987 Order establishing the February 11, 1987 proceeding. These definitions will be maintained here:

> Component: Any major element in a complete transmission system; e.g., a specific new line with all appurtenant termination, etc., facilities.
>
> Option: A combination of two (or more) components, one of which is to be built now, and the other(s) to be built later, usually when load growth renders the initial component inadequate to meet then current capacity requirements.

The following eight components were identified in the February 5th Order:

(1) CCtoC: Utah Power constructed 345 kV capable, 230 kV operated new line from the Cedar City area to a new Washington County substation (Central) with two new 138 kV lines on to St. George.

(2) SIGtoCC: Utah Power constructed 345 kV new line from Sigurd to the Cedar City area.

(3) IPPtoW: UAMPS constructed 230 kV new line from IPP to some appropriate Washington County substation, with two new 138 kV lines on to St. George.

(4) Voltage Support: Utah Power constructed voltage support equipment installed in Washington County.

(5) Load Segmentation: Facilities to segment St. George loads and allow shifting of those loads between feeds from the west and east sides of the County.

(6) Eastside Upgrade: Upgrade the 69 kV components of the existing Eastside line to 138 kV.

(7) CCtoC 230: Utah Power constructed 230 kV new line from the Cedar City area to Central with two new 138 kV lines on to St. George.

(8) SIGtoC 230: Utah Power constructed 230 kV new line from Sigurd to Central.

From these components, eight different options (combinations of components) were suggested in the order. They are:

Option 1a: CCtoC Now, SIGtoCC Later (i.e., when load growth requires) ** Utah Power's Preferred Option **

Option 1b: CCtoC Now, Voltage Support Later

Option 1c: CCtoC Now, IPPtoW Later

Option 2a: IPPtoW Now, CCtoC Later

Option 3a: Eastside Upgrade Now, Voltage Support Later

Option 3b: Eastside Upgrade Now, IPPtoW Later ** UAMPS' Preferred Option ** (UAMPS claims to want to build IPPtoW immediately rather than wait for load growth to require it in the year 2000)

Option 4a: CCtoC 230 Now, SIGtoC 230 Later

In the February 11th proceeding, and in subsequent submittals by the applicants, four additional components and two additional options were put forward for consideration:

Additional Components:

(9) Utah Power constructed 345 kV capable, 138 kV operated wood pole line segment from Newcastle to Central to be built in 1987. This line would be operated in parallel with the existing 138 kV line in this area.(NEWtoC)

(10) Utah Power constructed 345 kV capable, 230 kV operated line segment from Newcastle to the Cedar City area to be built in 1988. Upon completion of this component, Component 9 would also be operated at 230 kV.(NEWtoCC)

(11) 138 kV new line from Newcastle to Middleton. (NEWtoMID)

NOTE: Taken together, Components 9 and 10 constitute a phased construction of Component 1, with the deletion of one of the new 138 kV Central to Middleton lines incorporated in Component 1.

(12) Utah Power constructed 138 kV line from Newcastle to Middleton.

Additional Options:

Option 3c: Eastside Upgrade Now, IPPtoW Later, Voltage Support Later.

Option 4b: Phased Components 9, 10, and 11 beginning Now, SIGtoC 230 Later.

Option 5a: NEWtoMID Now, no current specification of Later components.

Finally, the Commission is interested in considering Component 9 by itself with no current specification of later components. This is set out as:

Option 4c: NEWtoC Now, no current specification of Later components.

3. In Reaching its Decisions, The Commission Relies Upon the Following Factual Information Derived from the Case Record.

a. Growth in peak electric loads in the Washington County-Iron County area is rapidly approaching the total load carrying capacity of the existing transmission system serving this area. The Commission considers this to be an emergency situation. Capacity south of the Sigurd substation is estimated at 143 MW. Projected total peak load on these facilities in the 1987-1988 heating season ranges from 130 to 140 MW, depending upon the magnitude of the natural gas impact on load.

b. Construction of at least minimal new transmission facilities is required in the immediate future to meet increasing Iron and Washington County transmission capacity requirements, to ensure against power outages in the 1987-88 heating season.

c. St. George is a member of UAMPS, and Washington City, Santa Clara, and La Verkin are likely to become UAMPS members. UAMPS, therefore, may assume responsibility for meeting part of these cities' load requirements.

d. The customers of both applicants in this case, UAMPS and Utah Power, impose substantial load obligations at the present time. Current and prospective UAMPS members' loads constitute 56 percent of the current Washington and Iron County loads, while Utah Power's retail loads constitute 28 percent (assuming all current and prospective UAMPS members take power from UAMPS). The balance, 16 percent, is Dixie-Escalante REA

load. Based on the same assumption, in Washington County alone, current and prospective UAMPS members' current loads constitute 81 percent of the total 100 MW, while Utah Power's retail loads are 7 percent and Dixie-Escalante load is 12 percent.

e. It is projected that growth in UAMPS members' loads will be much more rapid in the future than will growth in the loads of Utah Power and Dixie-Escalante REA. By the year 2010, the end year of load forecasts prepared in this case, current and prospective UAMPS members' loads are projected to constitute 61 percent of Iron and Washington County loads and 83 percent of load in Washington County by itself. The corresponding year 2010 percentages for Utah Power are projected to be 27 and 4 percent, and for Dixie-Escalante, 12 and 13 percent.

f. Due to contractual obligations relating to CRSP and Hunter II power, and assuming no change in these obligations, Utah Power's load responsibility is substantially greater than that imposed by its own retail loads. Utah Power would face responsibility for delivering 75 percent of the current Iron plus Washington County loads, and 60 percent of the load in Washington County alone. By 2010, Utah Power's responsibility would decrease to approximately 55 percent for the two-county area and 33 percent for Washington County alone. These conclusions assume UAMPS is responsible for its members' and Dixie-Escalante REA's non-CRSP, non-Hunter II, loads.

g. Costs of the components and complete options (as

those terms have been defined in Section 2) have been measured in two ways:

(1) in terms of the present value of the annual revenue requirements they impose (PVRR),

(2) annual revenue requirement per kW of peak load carried ($/kW-yr).

Table 1 summarizes the PVRR and first year $/kW-yr costs of the complete options considered in the case, and indicates the year when load growth would require construction of the second component of each complete option. Table 1 shows the first year $/kW-yr figures only. It must be understood these costs will decline over time as load growth results in spreading revenue requirement over more load and as depreciation reduces total revenue requirement. Table 2 summarizes the same data for each of the components which could be built first.

In both tables, the figures represent the resolution of uncertainties which is most favorable--i.e., which produce the lowest cost and the latest second component requirement year--for the option or component considered. In some cases, the parties disagree by as much as 20 percent on initial cost estimates and by significant amounts on individual components' load carrying capacities. Components involving voltage support equipment only have been excluded from Tables 1 and 2.

TABLE 1
SUMMARY COMPARISON OF COMPLETE OPTIONS
Present Value of Revenue Requirements (PVRR)
First Year Revenue Requirement per kW Peak Load ($/kW-yr)
Year Second Component Required

OPTIONS	Present Value of Revenue Requirement (x 1,000,000) (PVRR)	First Year Revenue Requirement per kW Peak Load ($/kW-yr)	Second Year Component Required (assuming PSC nat. gas impact)
1a CCtoC Now, SIGtoCC Later*	$49.7	$31.84	2002
1c CCtoC Now, IPPtoW Later	$86.8	$31.84	2002
2a IPPtoW Now, CCtoC Later	$72.7	$189.27	after 2010
3b Eastside Now, IPPtoW Later**	$68.8	$21.06	2000
4a CCtoC 230 Now, SIGtoC Later	$68.1	$31.84	2002
4c NEWtoC Now, Later unspecified***			
5a NEWtoMID Now, Later unspecified***			

* Utah Power's phased construction proposal would postpone part of the construction of the first component, CCtoC, into the second year. Therefore Option 1a would have a slightly lower PVRR than shown. Such a figure would correspond to Option 4b as listed in Section 2, above.

** UAMPS wants to build IPPtoW now, also. This produces PVRR of $87.729 million and $/kW-yr of $210.33.

*** These are single component options, and would not meet capacity requirements through 2010. For their cost figures see Table 2.

TABLE 2
SUMMARY COMPARISON OF FIRST COMPONENTS
Present Value of Revenue Requirements (PVRR)
First Year Revenue Requirement per kW Peak Load ($/kW-yr)
Year Second Component Required

FIRST COMPONENT	Present Value of Revenue Requirement (x 1,000,000) (PVRR)	First Year Revenue Requirement per kW Peak Load ($/kW-yr)	Second Year Component Required (assuming PSC nat gas impact)
1 CCtoC 345 const 230 oper*	$22.7	$31.84	2002
4 IPPtoW 230	$72.7	$189.27	after 2010
6 Eastside Upgrade	$15.0	$21.06	2000
7 CCtoC 230 (same as 1)*	$22.7	$31.84	2002
9 NEWtoC 345 const 138 oper	$8.9	$12.47	1994
10 New Westside 138 kV Line	$15.0	$21.06	1994

* Utah Power's phased construction proposal would postpone part of the construction of these components into the second year. Therefore, they would have a slightly lower PVRR than shown.

h. The IPP to Washington County line proposed by UAMPS would subject the Utah Power system to risk of system instability resulting from potential outages being experienced by the 500 kV DC IPP to Adelanto, California line if not mitigated by additional major AC transmission interconnection at IPP, or additional protective equipment installed by Utah Power.

4. The Commission's Regulatory Perspective is Statewide.

In the discharge of its duties and responsibilities as an agency of the Legislature of the State of Utah, the Public Service Commission is required to consider more than the interests of individual utilities and their respective ratepayers. That is as one would anticipate and expresses the distinction between state and local entities of government. State entities, by their very nature and assignment, are to protect and advance

the interests of the citizens of the state generally. Accordingly, the Legislature has made it clear in various statutory enactments that the Commission must weigh the interests of the public generally wherever such interests may be adversely impacted.

For example, the Legislature requires that the Commission, as a body, sit upon any hearing involving a public utility and issues "of significant public interest" (Section 54-1-3(2)(b), Utah Code Annotated) and may not delegate such matters to individual commissioners or administrative law judges except under exceptional circumstances.

Any act or omission of a public utility, whether accomplished or merely proposed, must be investigated by the Commission, if in the Commission's judgment such act or omission would impact upon the public interest generally--not merely upon the interests of ratepayers of the utility involved. (Section 54-4-2, Utah Code Annotated.)

Finally, in connection with the proposed certification of a construction proposal by an interlocal political subdivision, the Commission is directed by the Legislature to go beyond the interests of the applicant involved and consider the interests of (all) electrical consumers in the state of Utah. (Section 11-13-27, Utah Code Annotated.)

It is manifest that the Commission in all proceedings and in consideration of all utility matters must take into account the interests of all the public in the state of Utah. To

have it otherwise would be impolitic in that it could set agencies of the state against local entities of government.

5. There is an immediate and urgent need for additional transmission capacity in Southwest Utah.

It has been evident that the transmission system into southwest Utah is loaded to near capacity during both summer and winter peaks. There have been several instances in the last year where load has had to be shed when a problem developed on the system. Even with the new diesel generators at St. George the transmission system will be loaded to near capacity. Therefore, there is an immediate and urgent need for additional transmission capacity to southwest Utah.

6. The Commission Will Apply a Decision Rule that Minimizes Costs while Preserving Future Options

A major difficulty in deciding this case has been the very high degree of uncertainty concerning future developments in a number of critical aspects of the local and regional electricity market, as discussed on pages 13-14. If regulators and utilities have learned anything from the lessons of the late 70's and early 80's during which high demand projection resulted in over-commitment to large power plants, it was that planning for future facilities should stress flexibility. Over-commitment to large expensive facilities should be avoided and flexibility maintained until the uncertainties diminish. Depending upon how these uncertainties are ultimately resolved by the unfolding of events, a full-scale transmission construction project as origi-

nally requested by the applicants, if approved today by the Commission could prove to be entirely inappropriate. Since the threat exists that any option selected may prove in the future to be seriously inappropriate, and since the Commission's best efforts have proved unsuccessful in adequately reducing the level of uncertainty faced, the appropriate decision rule is to approve the lowest cost current construction to meet emergency southwest Utah transmission capacity requirements for the next few years, while leaving open as many future alternatives as possible.

7. The Construction Component that Best Meets this Strategy Goal is the First Phase of Utah Power's Proposed Phased 230 Option, i.e., Construction of a 345 kV capable, 138 kV Operated Wood Pole Line from Newcastle to Central, in Addition to and Operating in Parallel with the Existing 138 kV Line Component from Newcastle to Central.

At an estimated construction cost of $6.5 million, which implies a present value of revenue requirement figure of $8.9 million (at Utah Power's suggested cost of capital), this component would increase the load carrying capacity of the system south of Sigurd by from 10 to 12 MW from its current level of 143 MW to between 153 and 155 MW. Assuming the lower capacity increase figure (10MW), the augmented line would meet the current emergency and projected capacity requirements at least to 1991 (if there is no natural gas impact on projected peak loads) and until 1992 or 1994 assuming the natural gas load impact projections developed by Utah Power or Public Service Commission staff,

respectively. Further, this component appears to foreclose the smallest possible number of future alternatives for local capacity augmentation by either Utah Power or UAMPS, or by the two jointly, and for interconnection with out-of-state utilities, again by either applicant in this case, or by DG&T. Indeed, it appears to be consistent with most of these in the sense of actually being a part of such alternatives. Finally, the first phase component puts the least amount of current expenditure at risk of being rendered not useful by possible future developments such as construction by UAMPS of their proposed IPP to Washington County line.

The other two low-cost alternatives--the Eastside upgrade to 138 kV and the new Westside Newcastle to Middleton 138 kV line--are both more expensive than the first phase alternative, and less flexible in the ability they allow to respond at minimum cost to various possible future developments.

CONCLUSIONS

1. Based on the above, the Commission concludes that neither UAMPS' nor Utah Power's proposed projects are appropriate at this time. Rather, a small scale project should be built now to meet immediate emergency, southwestern Utah transmission capacity requirements.

2. The Commission recognizes UAMPS' desire for what have been described herein as the benefits of ownership rights. We conclude that at this time the proposed IPP to Washington County line is an unjustifiably costly vehicle for pursuing this

objective. Indeed, we would be derelict in our duty to consider the welfare of all ratepayers in the state if we authorize this alternative since it is by far the most expensive. Specifically, UAMPS proposed line would cost, on most favorable assumptions, $189.27 per peak kW delivered in the first year. This compares with $31.84 per kW for the next highest alternative and with $12.47 for the first phase project approved herein. This does not mean that this line would be inappropriate when it can be economically justified.

To insure a reasonable resolution of other UAMPS concerns, we conclude as follows:

a. Docket No. 87-999-03 is hereby established, with proceedings to convene as soon as practicable, for the purpose of examining utility wheeling practices in Utah and current FERC regulation of wheeling. A prehearing conference for the purposes of identifying participants and issues, and for scheduling proceedings will be held on Tuesday the 31st day of March, 1987, at 9:00 a.m., 4th Floor Hearing Room, Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah.

b. The Commission will entertain proposals for the further consideration, consistent with the concerns for issues, problems and uncertainties either mentioned herein or as otherwise developed in the case record, of sale by Utah Power of partial ownership of segments of its transmission system to UAMPS, either under negotiated or Commission-directed terms and conditions, and including the possibility of UAMPS ownership

increasing over time, along lines suggested in the hearing by the Division of Public Utilities, as UAMPS' share of the Washington and Iron County load responsibility increases.

c. Eventual construction by UAMPS of transmission facilities such as the IPP to Washington County line may be considered at a time when the economics of the project are more favorable and/or when additional AC transmission interconnection at IPP is proposed.

3. We conclude that economic conditions affecting the operations of electric service providers in Utah do not currently justify a restriction on Utah Power's wholesale sales for resale. We have stated this on several occasions over the last four years and for purposes of clarification reiterate it here. We will consider any proposal for such sales on its merits. Permission to undertake wholesale sales will not be withheld in the absence of compelling reasons to do so.

4. The Commission will not at this time attempt to decide the legal issues which have arisen in this case; we deal herein only with the practical necessity for immediate emergency action to bolster transmission to southwestern Utah.

INTERIM ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

1. Utah Power is ordered to begin immediately to construct their proposed 345 kV capable, 138 kV operated, wood pole line segment from Newcastle to Central, with the intention of having that element operational by the 1987-88 heating season.

Nothing but this first phase is herein approved and that solely as the least-cost alternative required to meet currently pressing transmission capacity needs in Washington County. No expenditures for further construction are authorized by this order, and none are to be undertaken without the explicit approval of this Commission. The basis for any such future expenditures will be a Commission determination that the matters discussed herein, and identified as issues and uncertainties have been sufficiently clarified or resolved to permit a finding of what the public interest requires.

2. A copy of this order is to be delivered to the Bureau of Land Management, United States Department of the Interior.

DATED at Salt Lake City, Utah, this 3rd day of March, 1987.

/s/ Brian T. Stewart, Chairman

(SEAL)

/s/ Brent H. Cameron, Commissioner

/s/ James M. Byrne, Commissioner

Attest:

/s/ Stephen C. Hewlett
Commission Secretary

Exhibit B

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	)	Case No. 85-2011-01
IN THE MATTER OF THE PROPOSED CONSTRUCTION OF TRANSMISSION FACILITIES BY UTAH POWER & LIGHT AND/OR UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS AND DESERET TRANSMISSION AND GENERATING COOPERATIVE AND ST. GEORGE CITY	)	Case No. 85-999-08 PETITION OF UAMPS' AND ST. GEORGE FOR REHEARING AND REQUEST FOR STAY

I. INTRODUCTION

Pursuant to Utah Code Ann. § 54-7-15, the City of St. George and the Utah Associated Municipal Power Systems ("UAMPS"), hereby jointly petition for rehearing of certain of the findings made by the Commission in the captioned cases in its Report and Order Authorizing Interim Solution to Southwest Transmission Capacity Requirements, dated March 3, 1987 (the "Report and Order"). In addition, St. George and UAMPS respectfully request a stay of the construction by Utah Power & Light Company ("UP&L") of the transmission line segment from Newcastle to Central until a decision on the petition and request contained herein is rendered by the Commission.

II. PETITION FOR REHEARING

St. George and UAMPS respectfully petition for rehearing of the following findings in the Report and Order:

1. That UP&L begin immediately to construct its proposed 345 kV capable, 138 kV operated, wood pole line segment from Newcastle to Central (Report and Order at 27).

2. That the line segment from Newcastle to Central best meets emergency needs in Southwest Utah while leaving open as many future alternatives as possible (Report and Order at 24).

3. That the line segment from Newcastle to Central will increase the carrying capacity of the transmission system to Southwest Utah by 10 to 12 MW (Report and Order at 24-25).

4. That the Present Value of Revenue Requirement ("PVRR") and the First Year Revenue Requirement Per Kilowatt Peak Load of the IPP to Washington County component in Tables 1 and 2 (Report and Order at 20-21) are $72.7 million and $189.27/kW-yr, respectively.

5. That the IPP to Washington County 230 kV line would subject the UP&L system to the risk of system instability (Report and Order at 21).

6. That the Eastside Upgrade as constructed by UP&L is not the least costly and best alternative.

7. That UAMPS' proposed IPP to Washington transmission line is not approved (Report and Order at 25).

8. That the Commission can base its denial of UAMPS' application and approval of UP&L's proposal upon the effect of UAMPS' proposal on rates charged to municipal ratepayers.

In support of this Petition for Rehearing, St. George and UAMPS respectfully state:

A. The Authorization for UP&L to Construct the Newcastle to Central Line Segment Was in Error.

1. The Proposal Was Not Adequately Supported.

This petition that the Commission rehear and reconsider its authorization of the Newcastle to Central line segment is founded upon grave concerns that the information presented by UP&L in support of that component is misleading, incomplete, and was presented on the very last day of hearing without the opportunity of the other parties to evaluate it and respond. The proposed line segment had not been considered in prior informal discussions with the Commission staff. The proposal was not included in prefiled materials nor was it subject to rigorous cross-examination because of the format of the February 11 hearing. Finally, the proposed Newcastle to Central segment is not supported by any detailed cost estimates, load flows, engineering design, or specific route description. Certainly, there is a serious question as to whether the minimal information supplied by UP&L in support of the segment would have been sufficient to support a request for

approval of the line under the proposed amendments to General Order 95 (A-67-05-95) of the Commission's Rules and Regulations.

2. There Will Be No Benefit to Southwest Utah From the Newcastle to Central Line Segment.

a. The Reliability of Service to Southwest Utah Will Not Be Enhanced.

On page 23 of the Report and Order, the Commission refers to instances "where load has had to be shed when a problem developed on the system." The problems that necessitated the load shedding involved in one case a regulator failure at Enterprise and in another a transformer failure at the Cedar City substation (Tr. 8126).

There is no benefit to St. George from the construction of the Newcastle to Central line segment because it will do nothing to prevent load shedding should a regulator or transformer fail again or should other transmission support facilities such as the Middleton capacitor or a St. George diesel generating unit fail.

The Newcastle to Central segment will not eliminate the reliance on these components of the existing system, nor will it correct any of the problems in the existing system. Therefore, the reliability of the transmission service to southwest Utah is not enhanced. Even with the Newcastle to Central segment, the residents of Washington County will continue to be served at a lesser level of reliability than the

remainder of the state. The Eastside Upgrade, on the other hand, eliminates further reliance on these components because it is essentially a new 138 kV line between West Cedar and Middleton, and because it provides an additional 40 MW capacity to the system in Washington and Iron Counties.

b. The Newcastle to Central Line Segment Will Not Accommodate Near Term Load Growth in Southwest Utah.

A further and more serious problem with the Newcastle to Central segment is that it will only accommodate load growth in southwest Utah through 1990 unless St. George runs its diesel generators at peak.

There was considerable testimony by UP&L witness Wilkinson during the hearing about the inherent unreliability of the diesel generation at St. George. Mr. MacArthur agreed that the diesel generators were undesirable as a long-term solution (Tr. 370, 8126-27). All parties concurred that diesel generation is not a desirable alternative to additional transmission.

Attached are three tables which illustrate the forced reliance on the diesel generators created by the Newcastle to Central segment. The information in these tables is taken directly from that provided to the parties by the Commission staff in anticipation of the February 11 hearing.

Table I shows that under the forecast load growth in southwest Utah, taking into account natural gas, the two diesel generating units will carry the system through 1990 without additional transmission, assuming the diesels operate at their rated capacity.

Table II shows that if it is assumed that the Newcastle to Central segment provides an additional 12 MW capacity, it will carry the system until 1994 only if the diesels are operated as part of the system. If the diesels are not considered, then the Newcastle to Central segment will carry the system only through 1990.

Table III shows that the Eastside Upgrade will carry the system through 1997 without reliance on the diesel generation capacity.

It is clear that the Newcastle to Central segment nas merit only to the extent that the St. George diesels are relied upon as peaking units. The undesirability of reliance on the diesels increases as the load increases, thereby forcing reliance on the diesels for longer periods across the peaks. The Newcastle to Central segment thus represents no change in the status quo, as St. George will not be able to meet its peak load obligations without use of the diesel generators.

c. The Length of the Newcastle to Central Line Segment Route is Shorter Than UP&L Represented.

The problem of reliance on the St. George diesel units becomes even more critical when the actual length of the Newcastle to Central route is considered. UAMPS Ex. No. 1, introduced by UAMPS witness Sevey at the beginning of the hearings, indicates that the segment is actually 20 miles in length, as opposed to the 25 miles claimed by UP&L. As a result, there will be twenty percent less new, larger size conductor in parallel with the existing old, smaller size conductor in the system than UP&L represented to the Commission. With less new conductor, the total electrical resistance of the system with the Newcastle to Central line segment will be significantly greater than if the new segment were as long as UP&L asserts. As a result, the system will not be able to carry the additional 10 to 12 MW claimed by UP&L, but will have a lesser capability. Lower additional capacity means that additional construction will be required even sooner than 1990, if the diesel units are not considered as part of the solution.

d. The Commission Has No Authority to Order St. George to Make a Specific Utility Decision.

If, by ordering the Newcastle to Central segment, the Commission necessarily contemplates the operation by St. George

of the diesel generators, St. George will in effect be ordered by the Commission to undertake a specific utility decision. Whatever authority the Commission may have to certificate a transmission or generation project by an interlocal agency, the Commission certainly has no jurisdiction over the utility operations or decisions of a municipality in the State of Utah. The order to construct the Newcastle to Central segment takes away from St. George the ability to use the diesel generators in the manner it deems most beneficial to its ratepayers, which is an impermissible intrusion by the Commission into the operation of the St. George system.

e. The Commission Has No Authority to Make a Finding Based on the Rates Paid by Ratepayers of Municipal Utilities.

The Report and Order clearly indicates that the Commission considered, among other things, what it perceived to be the interests of the ratepayers of the municipal systems as well as those of UP&L (Report and Order at 22) and that the proposed IPP to Washington line is too expensive. From these conclusions it necessarily follows that the Commission is passing judgment on the appropriateness of the rates charged by municipal utilities to their ratepayers because it has determined that it is not in the best economic interests of those ratepayers for the UAMPS proposed transmission line to be built. The determination of what is or is not an appropriate

rate, including what should or should not go into rates, is reserved to the municipality itself. Under the Constitution, the Commission cannot interfere with that determination. Logan City v. Public Utilities Commission, 72 Utah 536, 271 P.961 (1928). For a detailed analysis, see pages 66-70 of the Post-Hearing Brief of UAMPS filed with the Commission on August 4, 1986 in the captioned matter.

3. Future Options are Foreclosed by the Newcastle to Central Line Segment.

The Commission, in the Report and Order, expressed the intent to select an interim solution which would preserve the greatest range of future options to the parties. The line segment authorized in the Report and Order, however, does not preserve the greatest range of options for the reasons set forth below.

a. The Newcastle to Central Line Segment May Preclude Future Line Construction in the Western Corridor.

The construction of the Newcastle to Central segment creates a serious risk that the western corridor will be foreclosed from use in the future for an additional transmission line. The right-of-way corridor south of Newcastle is already occupied by the IPP to Adelanto 500 kV DC line and a 138 kV line owned by UP&L. The corridor is geographically situated such that it will handle at most only

one more transmission line unless additional rights-of-way are granted over much rougher and more difficult terrain. The Bureau of Land Management may well be reluctant to expand the corridor to accommodate more than one additional transmission line, given the terrain in the area, especially in light of its reluctance to grant two corridors to southwest Utah in the first place, which was expressed in its letter of January 16, 1985 to the Commission.

The western corridor is important not only to UAMPS if it desires to build a 230 kV line from IPP, but also to the Intermountain Power Agency if IPP Units 3 and 4 are to be constructed. The absence of a corridor for a transmission line from IPP Unit 3 to California may impair the feasibility of Unit 3 (and, it follows, Unit 4). This in turn would have far-reaching effects on the state's economic well-being, and would run contrary to recent legislative intent in enacting amendments to the Utah Interlocal Act to encourage the construction of Units 3 and 4. See S.B. 110, Sec. 11-3-5.5 (1987 Leg.).

If the Newcastle to Central segment is constructed and if, in the future, UAMPS or any other entity can justify construction of transmission from IPP into Washington County, it is possible that this corridor may not be available. If the corridor is available, it will be more expensive to build a

line through it if the Newcastle to Central segment is in place, which will affect the feasibility of new transmission.

b. *There is No Assurance of UAMPS* Securing Rights in the Newcastle to Central Segment.

Given the location of the segment in the Western corridor, the UP&L-owned Newcastle to Central line represents a barrier to UAMPS' future options to the extent that rights through the UP&L segment cannot be obtained by UAMPS. This barrier would, of course, not exist if UAMPS were assured ownership in the complete, long-term solution to the southwest Utah transmission problem.

c. Additional Major Construction by UP&L Will Be Required Almost Immediately.

The Report and Order does not appear to consider the testimony of UP&L witness Wilkinson that in order to have any benefit, the Newcastle to Central segment must be followed almost immediately by construction of a segment from Newcastle to Cedar City (Tr. 8050, 8052, 8058, 8071). The latter segment is identified in the Report and Order as Component No. 10.

The need for additional, virtually immediate construction is even greater if the operation of the St. George diesels is not considered.

In effect, the Commission is eliminating future UAMPS options entirely by authorizing an interim solution in 1987 which will require major additional construction in 1988 by

UP&L, thereby foreclosing consideration of future UAMPS transmission.

d. The Eastside Upgrade Will Preserve the Greatest Range of Options.

One of the primary advantages of the Eastside Upgrade option is that it would not preclude the future use of any corridor by either UP&L or UAMPS in the future. The western corridor will remain available for future major transmission, whether it be constructed by UAMPS, UP&L or IPP. The diesel generators at St. George will be available for emergency and economy purposes and will not be tied up for system support for the next several years. Further, the Eastside Upgrade will provide for future dual feed service in separate corridors to Washington County.

B. The Calculation of Costs is Not Clear.

In Tables 1 and 2 of the Report and Order, the Commission compares the various options by use of a "Present Value of Revenue Requirement" or "PVRR" and "First-year Revenue Requirement." The calculation methodology for determining these amounts was not set forth in the Report and Order. UAMPS respectfully suggests that these calculations may be in error for both the Eastside Upgrade and the IPP to Washington options. In this regard, it should be remembered that Mr. Topham challenged both the discount factors and cost of capital numbers applied by the Commission staff (Tr. 8100-02; UP&L

Exhibit No. FH-4). There is no indication in the Report and Order of what factors were used in arriving at the information in Tables 1 and 2.

1. The Useful Life of Capital Investment Was Apparently Not Considered.

With regard to the Eastside Upgrade, the Report and Order shows a PVRR of $15 million and a first-year revenue requirement of $21.06 per kilowatt-year. According to Table 2, no additional components will be needed until the year 2000 if the Eastside Upgrade is constructed. If the Newcastle to Central segment is built, additional facilities will be needed in 1994. The time difference for construction of additional facilities is even more critical given the problem of relying on St. George diesel generation. Without diesel generation, no additional construction will be needed until 1997 for the Eastside Upgrade, and until 1990 for the Newcastle to Central segment.

There is no indication in the Report and Order that any weight was given to the useful life of the capital investment for the Newcastle to Central segment versus the life of the investment for the Eastside Upgrade.

2. The Costs of the Second Phase of the UP&L Proposal (Component No. 10) Were Apparently Not Considered.

Another confusing aspect of Tables 1 and 2 is the failure to consider the costs of the second part of the UP&L

proposal (Component No. 10), which UP&L would cost an additional $10.1 million in 1988 (UP&L Ex. FH-1) and which was necessary to take care of St. George in the short term. Component No. 10 is required to provide additional capacity for the time frame within which the Eastside Upgrade would provide additional capacity. The addition of these costs into the equation compels the conclusion that the Eastside Upgrade is the most cost-effective short-term solution.

3. Proper Comparison Between Components and Options Was Not Made.

The comparison of options with components in the Report and Order is confusing. The Report and Order takes UP&L's February 11 proposed option and divides it into three components (Nos. 9, 10 and 11). The Report and Order then takes Component No. 9 and treats it as a full option, notwithstanding testimony by UP&L witnesses that the entire option has to be constructed to provide short-term relief to southwest Utah. (Tr. 8057-58) The Report and Order compares Component No. 9 to the Eastside Upgrade option as though two full options were being compared, when in essence a component of one option is being compared to a full option. This division of the UP&L proposal into components was apparently motivated by a desire to isolate the least costly short-term alternative without regard to dual feed into the area.

To be consistent, the same analysis should have been applied to the Eastside Upgrade. UAMPS Exhibit FH-3 contains a breakdown of the Eastside Upgrade into various parts. Page 4 of UAMPS Exhibit FH-3 shows the cost of a new substation at Hurricane/LaVerkin to be $2.5 million and that of the new facilities at Middleton to be $1.9 million. A copy of UAMPS Exhibit FH-3 is attached.

If cost is the only concern in determining the short-term transmission solution, then the Eastside Upgrade could be built not for the $10.5 million indicated in UAMPS Exhibit FH-3, but for $7 million. This can be accomplished by serving the existing 69 kV substations at Washington, Hurricane and LaVerkin over the existing Dixie REA to Quail Creek and Hurricane City to Quail Creek 69 kV lines. This would save $2.5 million on the new Hurricane/LaVerkin 138 kV substation and $1 million on some of the proposed facilities at Middleton, principally by postponing the purchase and construction of the proposed transformer bay, capacitors, and part of the breakering scheme.

Construction of those parts of the Eastside Upgrade which are absolutely necessary will still result in a better, more reliable transmission link than the Newcastle to Central segment and will provide 40 MW of additional capacity instead of 12 MW. However, the additional $3.5 million will assure

that the system operates with a maximum of integrity and efficiency.

4. The First Year Revenue Requirement for the IPP to Washington County Line Was Apparently Based on Unrealistically Conservative Assumptions.

The IPP to Washington line (Component No. 4) is shown on Table 2 to have a First Year Revenue Requirement of $189.27 per kilowatt-year, which is much greater than that of any other component. This is not consistent with the record and appears to be based upon extraordinarily conservative assumptions. It would appear, although it is not clear, that this high number results from the use of different assumptions in the analysis of the costs of the UAMPS proposals versus the UP&L proposals.

The calculations for the UP&L options appear to be based on the assumption that UP&L will transmit power over its facilities to serve the entire southwest Utah load. The calculations for the IPP to Washington County line, however, appear to be based on the assumption that only a portion of the load will be served off that line, with the remainder served by UP&L on its existing system. Apparently, the assumption is that only non-CRSP and non-Hunter 2 power for public power loads in southwestern Utah will be transmitted by the IPP to Washington line. This latter assumption ignores the fact that UAMPS may not schedule any resource on UP&L's existing

facilities into the area (Cf. Trans. 6739-42). This use of differing assumptions results in an unrealistically high First Year Revenue Requirement for the IPP to Washington segment.

5. Other Variables and Assumptions Were Not Clearly Identified or Listed in Tables 1 and 2.

In addition to the uncertainties identified above in the analysis underlying Tables 1 and 2, it is not clear from the Report and Order how certain categories of data were used in the tables. These categories of data were used by the Commission staff in its analysis provided to the parties and referred to in the Commission's Order of February 5, 1987 setting the February 11, 1987 hearing. The categories include the discount rate, capitalized levelizing factor, cost of capital, depreciation period, inflation factor, capital costs of each component and option, capacity south of Sigurd for each component and option, current capacity south of Sigurd for each component and option, kilowatt capacity for each component and option, and self-generation values associated with Washington County. In addition, it is not clear from the Report and Order how the reliability of service (i.e., radial versus dual feed) to the consumers of electricity in Washington County was considered.

C. The IPP to Washington County Line Will Have No Effect on the UP&L System.

The Report and Order concludes on page 21 that the IPP line proposed by UAMPS would "subject the Utah power system to the risk of system instability resulting from potential outages being experienced by the 500 kV DC IPP to Adelanto, California line if not mitigated by additional major AC transmission interconnection at IPP or additional protective equipment installed by Utah Power." This conclusion ignores the fact that the instability concerns raised by Nevada Power Company and echoed by UP&L were based on the assumption that there would be a Nevada interconnection. Suffice it to say that in no case will an IPP 230 kV line affect the stability of the UP&L system.

D. The Eastside Upgrade Clearly Provides the Most Reliable Short-Term Solution at Low Cost Without Foreclosing Future Major Transmission Options.

For the reasons set forth above, the Eastside Upgrade represents the least costly and best alternative to solve St. George's short-term needs while leaving open all of the options available to UAMPS, St. George and UP&L as the uncertainties identified in the Report and Order are resolved.

E. UAMPS and St. George Are Willing to Participate in Constructing and/or Owning the Eastside Upgrade Facilities.

The Eastside Upgrade proposal is for the construction by UP&L of the additional facilities in the eastern corridor to serve southwest Utah. The Eastside Upgrade eliminates reliance on St. George diesel units to stabilize the system. However, Mayor Daines and Mr. MacArthur testified on February 11, 1987 that UAMPS and/or St. George would consider the purchase of all or parts of the Eastside Upgrade to accommodate UP&L's concerns that the Eastside Upgrade facilities may not be of value if certain long-term solutions are implemented (Tr. 8105, 8114-15, 8146-47, 8151-52).

III. REQUEST FOR STAY OF CONSTRUCTION

Pending resolution by the Commission of the matters raised herein, St. George and UAMPS respectfully request that the Commission stay the construction of the Newcastle to Central line segment to prevent a fait accompli by UP&L.

Respectfully submitted this ____ day of March, 1987.

FOR THE CITY OF ST. GEORGE

Ted Shumway, Esq.

City Attorney
175 East 200 No., St. George, UT 84770

FOR THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

VAN COTT, BAGLEY, CORNWALL & McCARTHY
James A. Holtkamp
Robert A. Peterson
David L. Deisley

By _____
Attorneys for Utah Associated
Municipal Power Systems
50 South Main, Suite 1600
Salt Lake City, Utah 84145

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TABLE I

Year	Forecast w/Nat. Gas (kw)	Current Trans. Capacity (kw)	Surplus/ (Deficit) Trans. Cap. (kw)	Required St. George Generation (kw)	Net Generation Surplus/(Deficit) Trans. Cap. (kw)
1988	143,573	143,000	(573)	14,000	13,427
1989	148,905	143,000	(5,905)	14,000	8,095
1990	154,740	143,000	(11,740)	14,000	2,260
1991	158,571	143,000	(15,571)	14,000	(1,571)
1992	162,733	143,000	(19,733)	14,000	(5,733)
1993	166,959	143,000	(23,959)	14,000	(9,959)
1994	171,439	143,000	(28,439)	14,000	(14,439)
1995	175,690	143,000	(32,690)	14,000	(18,690)
1996	179,888	143,000	(36,888)	14,000	(22,888)
1997	184,397	143,000	(41,397)	14,000	(27,397)
1998	189,043	143,000	(46,043)	14,000	(32,043)
1999	193,896	143,000	(50,896)	14,000	(36,896)
2000	198,752	143,000	(55,752)	14,000	(41,752)
2001	203,911	143,000	(60,911)	14,000	(46,911)

*Existing transmission system plus maximum assumed generation will provide for forecasted load only through the year 1990.

TABLE II

Year	Forecast w/Nat. Gas (kw)	Current(1) Trans. Capacity (kw)	Surplus/ (Deficit) Trans. Cap. (kw)	Required(2) St. George Generation (kw)	Net Generation Surplus/(Deficit) Trans. Cap. (kw)
1988	143,573	155,000	11,427	-0-	11,427
1989	148,905	155,000	6,095	-0-	6,095
1990	154,740	155,000	260	-0-	260
1991	158,571	155,000	(3,571)	3,571	-0-
1992	162,733	155,000	(7,733)	7,733	-0-
1993	166,959	155,000	(11,959)	11,959	-0-
1994	171,439	155,000	(16,439)	14,000	(2,439)
1995	175,690	155,000	(20,690)	14,000	(6,690)
1996	179,888	155,000	(24,888)	14,000	(10,888)
1997	184,397	155,000	(29,397)	14,000	(15,397)
1998	189,043	155,000	(34,043)	14,000	(20,043)
1999	193,896	155,000	(38,896)	14,000	(24,896)
2000	198,752	155,000	(43,752)	14,000	(29,752)
2001	203,911	155,000	(48,911)	14,000	(34,911)

(1) PSC ordered UP&L construction provides 12 MW of additional capacity.

(2) Generation, to maximum installed capacity, required to insure meeting load.

* Upgraded transmission system plus maximum assumed generation will provide forecasted load only through the year 1993.

TABLE III

Year	Forecast w/Nat. Gas (kw)	Current(1) Trans. Capacity (kw)	Surplus/ (Deficit) Trans. Cap. (kw)	Required(2) St. George Generation (kw)	Net Generation Surplus/(Deficit) Trans. Cap. (kw)
1988	143,573	183,000	39,427	-0-	39,427
1989	148,905	183,000	34,095	-0-	34,095
1990	154,740	183,000	28,260	-0-	28,260
1991	158,571	183,000	24,429)	-0-	24,429
1992	162,733	183,000	20,267)	-0-	20,267
1993	166,959	183,000	16,041	-0-	16,041
1994	171,439	183,000	11,561	-0-	11,561
1995	175,690	183,000	7,310	-0-	7,310
1996	179,888	183,000	3,112	-0-	3,312
1997	184,397	183,000	1,397	-0-	1,397
1998	189,043	183,000	(6,043)	6,043	-0-
1999	193,896	183,000	(10,896)	10,896	-0-
2000	198,752	183,000	(15,752)	14,000	(1,752)
2001	203,911	183,000	(20,911)	14,000	(6,911)

(1) UAMPS proposed Eastside, dual feed upgrade from Cedar City to St. George at 138 kV provides 40 MW of additional capacity.

(2) Generation, to maximum installed capacity, required to insure meeting load.

* Upgraded transmission system plus maximum assumed generation will provide forecaste load through the year 1999.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing Petition for Rehearing, Request for Clarification, Motion for Amendment of Order, and Request for Stay to be hand delivered this 23d day of March, 1987 to the following:

Thomas W. Forsgren, Esq.
Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84118

Lynn Mitton, Esq.
Deseret Generation &
Transmission Cooperative
8722 South 300 West
Sandy, Utah 84070

William B. Bohling, Esq.
Jones, Waldo, Holbrook &
McDonough
1500 First Interstate Plaza
Salt Lake City, Utah 84101

Sandy Mooy, Esq.
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114

Richard Hagstrom, Esq.
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114

David Christensen, Esq.
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114

Michael Ginsberg, Esq.
Utah Attorney General's Office
State Capitol Building
Salt Lake City, Utah 84114

Laura Holtkamp

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Exhibit C

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EXHIBIT "C"

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS for Issuance of a Certificate of Convenience and Necessity Authorizing the Construction of a Transmission Line in Southwestern Utah.	CASE NO. 85-2011-01
	ORDER DENYING PETITION FOR REHEARING
In the Matter of the Proposed Construction of Transmission Facilities by Utah Power and Light and/or Utah Associated Municipal Power Systems and Deseret Generation and Transmission Cooperative and St. George, Utah	CASE NO. 85-999-08

ISSUED: May 21, 1987

Appearances:

Thomas W. Forsgren Edward Hunter	For	Utah Power and Light Company
James A. Holtkamp	"	Utah Associated Municipal Power Systems
Michael Ginsberg, Assistant Attorney General	"	Division of Public Utilities, Department of Business Regulation, State of Utah
Donald B. Holbrook *Elizabeth M. Haslam*	"	Utility Shareholders *Association of Utah*
Lynn Mitton	"	Deseret Generation & Transmission Co-operative
David Christensen, Assistant Attorney General	"	Utah Energy Office
Sandy Mooy, Assistant Attorney General	"	Committee of Consumer Services

Richard M. Hagstrom, Attorney General
Assistant Attorney
General

By the Commission:

On March 23, 1987, the Utah Associated Municipal Power Systems ("UAMPS") and the City of St. George filed a joint petition, pursuant to Utah Code Annotated, § 54-7-15, requesting a rehearing of this Commission's March 3, 1987 Order in the above-entitled matter and a stay of the construction of the authorized transmission line. Deseret Generation & Transmission Cooperative ("DG&T") filed its application for review or rehearing, seeking the same relief on March 23, 1987.

On April 28, 1987, this Commission heard the arguments of the parties pertaining to the petition and application of UAMPS, the City of St. George, and DG&T. Based on those arguments, the written memoranda provided by the parties, and a review of the record on the matters raised in the petition and application, and being fully advised in the premises, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That it is an uncontested fact that there is an urgent and immediate need for additional transmission capacity in Southwestern Utah in order to prevent disruptions of service to electric consumers in that portion of the state.

2. That granting the petition of UAMPS, or the application of DG&T would make it impossible to meet the emergency

needs of electric consumers in Southwestern Utah by the critical winter heating season of 1987-1988.

3. That the Commission's March 3, 1987 Order is supported by substantial competent evidence and is based on the applicable provisions of Utah law.

4. That no party has set forth any ground which would support a legitimate challenge to the lawfulness of this Commission's March 3, 1987 Order.

Based on the aforementioned, the Commission issues the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That:

1. UAMPS' and St. George City's Petition for Rehearing and Request for Stay is hereby denied; and

2. DG&T's Application for Review or Rehearing is hereby denied.

DATED at Salt Lake City, Utah, this 21st day of May, 1987.

/s/ Brian T. Stewart, Chairman

(SEAL)

/s/ Brent H. Cameron Commissioner

/s/ James M. Byrne, Commissioner

Attest:

/s/ Stephen C. Hewlett, Secretary

Exhibit D

EXHIBIT "D"

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF UTAH POWER & LIGHT COMPANY TO CONSTRUCT A 345 KV TRANSMISSION LINE FROM ITS SIGURD SUBSTATION TO THE UTAH-NEVADA BORDER	:	APPLICATION Case No. 87-035-26

Utah Power & Light Company ("UP&L" or "Company"), an electrical corporation and public utility in the State of Utah, pursuant to Utah Code Ann. Secs. 54-4-1 and 54-4-25 hereby respectfully applies to this Commission for a Certificate of Convenience and Necessity to construct a 345 kV transmission line from the Company's Sigurd Substation to the Utah/Nevada border as specified more particularly herein and in support of the application shows the Commission as follows:

Jurisdiction

1. UP&L is a Utah corporation which is qualified to transact business and operates as an electric public utility in the States of Utah, Idaho and Wyoming. UP&L is also subject to the jurisdiction of the Federal Energy Regulatory Commission. The Company's principal office is located at 1407 West North Temple, Salt Lake City, Utah, 84140.

2. Applicant's Articles of Incorporation and all amendments thereto are on file with the Secretary of State of the State of Utah and with this Commission.

Purpose of Application

3. UP&L has excess capacity and energy and desires to sell and deliver a portion of that excess to Nevada Power Company ("NPC"). NPC desires to purchase the same from UP&L pursuant to the terms and conditions of the hereinafter described agreements.

4. On August 17, 1987, UP&L and NPC entered into a Power Sales Agreement and a Transmission Facilities Agreement, copies of which are attached hereto as Exhibits "A" and "B."

5. The term of the Power Sales Agreement is 20 years. During the first 9 years, commencing on June 1, 1990 and continuing through May 31, 1999, UP&L agrees to sell and deliver, to the point of interconnection between the UP&L and NPC facilities located at the Utah/Nevada border and NPC agrees to purchase and accept:

a. 50,000 kW of firm base load capacity and energy at 100% load factor for 12 months of each year, at the Company's FERC Total Requirements Rate; and

b. 90,000 kW of power capacity and energy at a minimum of 60% load factor and a maximum of 75% load factor during the summer months from June 1 to September 30 of each year, for the charges specified in the Agreement.

During the period commencing on June 1, 1999, and continuing through May 31, 2010, UP&L and NPC have the option to:

a. Negotiate a mutually acceptable rate for purchase of 140 MW of peaking capacity and energy from UP&L;

b. Participate in a mutually beneficial seasonal diversity exchange of power; and

c. Continue to schedule nonfirm exchanges over the Utah-NPC 345 kV transmission line pursuant to the existing interconnection agreement and terminating the 140 MW Power Sales Agreement.

6. The Power Sales Agreement provides for termination, among other things, in the event NPC has not received its state regulatory commission approval by November 1, 1987, or in the event UP&L has not received its state regulatory approval by December 1, 1987, or in the event all regulatory approvals, including FERC's acceptance for filing, are not obtained by January 1, 1988. Approvals by those dates are necessary in order to facilitate construction and interconnection of the 345 kV transmission facilities by June 1, 1990 and to meet summer peak needs of NPC. In the event the regulatory approvals are not obtained by the dates given, it is necessary that NPC proceed with its plans to construct Clark Station combined cycle generating units to meet its load requirements in 1990.

7. The Transmission Facilities Agreement provides for the construction of a 345 kV transmission line and appurtenant facilities running from UP&L's system (Sigurd Substation) to the

point of interconnection between the UP&L and NPC transmission facilities by June 1, 1990. It is the intent of UP&L and NPC to keep the subject transmission line scheduled to its maximum transfer capability at the point of interconnection. The Agreement terminates if all regulatory approvals and FERC's acceptance for filing are not obtained by the dates set forth in paragraph 6 above, or 40 years after the operation date or thereafter as specified in the Agreement. A 21-mile length of 345 kV transmission line running from Newcastle to the proposed Red Butte (Central) Substation, previously certificated by the Commission, is presently under construction and is anticipated to be completed on or before December 1, 1987. This line will function as a segment in the completed subject line.

8. The proposed transmission line will not conflict with or adversely affect the operations of any existing certificated fixed public utility supplying the same product or service to the public and although the line will traverse the certificated territory of Dixie-Escalante REA, the Company will not be serving customers within said territory.

WHEREFORE, Utah Power & Light Company prays that the Commission:

1. Grant a certificate that the present and future public convenience and necessity require the construction and operation of the subject transmission

line from the Sigurd Substation to the point of interconnection as described in the Agreement, and

2. Set an expedited hearing process in order to permit the Company to meet the regulatory approval dates described above.

DATED this 25th day of September, 1987.

VERL R. TOPHAM
Senior Vice President, Chief
Financial Officer and
Commercial Manager

THOMAS W. FORSGREN
Attorney for Utah Power
& Light Company
1407 West North Temple
Salt Lake City, Utah 84140

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

VERL R. TOPHAM, being first duly sworn, deposes and says that he is a Senior Vice President, Chief Financial Officer and Commercial Manager of Utah Power & Light Company, that he has read and understands the allegations of the foregoing Application and that the same are true, to the best of his information, knowledge and belief.

Verl R. Topham

SUBSCRIBED AND SWORN TO before me this 25th day of September, 1987.

NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:
10-28-89

Exhibit E

EXHIBIT "E"

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of UTAH POWER & LIGHT COMPANY to Construct a 345 KV Transmission Line From its Sigurd Substation to the Utah-Nevada Border.	CASE NO. 87-035-26 REPORT AND ORDER AUTHORIZING UTAH POWER & LIGHT COMPANY TO CONSTRUCT A 345 KV TRANSMISSION LINE

ISSUED: December 1, 1987

Appearances:

Thomas W. Forsgren Edward A. Hunter, Jr.	For	Utah Power & Light Company
Michael Ginsberg Assistant Attorney General	"	Division of Public Utilities Department of Business Regulation
William B. Bohling	"	Utility Shareholders Association of Utah
Lynn Mitton	"	Deseret Generation & Transmission Co-operative
James A. Holtkamp	"	Utah Associated Municipal Power System

By the Commission:

On September 25, 1987, Utah Power & Light Company ("Utah Power") filed an application with this Commission seeking a Certificate of Convenience and Necessity to construct a 345 kV transmission line from Utah Power's Sigurd Substation to the Utah-Nevada border. On November 13, 1987, the Commission granted the motions for intervention of Deseret Generation & Transmission Co-operative ("DG&T"), Utah Associated Municipal Power System ("UAMPS") and the Utility Shareholders Association of Utah ("USAU") and decided to address issues regarding possible joint use or ownership of the proposed transmission facilities by DG&T and UAMPS in a separate proceeding in this docket and reserved the

right to limit or condition any grant of a certificate in this proceeding (Phase I) in a manner that would maintain the status quo as determined by this Commission's March 3, 1987, Order in Case Nos. 85-999-08 and 85-2011-01 relative to the adviseability of joint ownership of the line, including (i) the authority of the Commission to provide for joint ownership by DG&T and UAMPS, and (ii) the ability and legal rights of DG&T and UAMPS to obtain such joint ownership and (iii) the ability of USAU to challenge such Commission authority or rights of DG&T and UAMPS. On November 23, 1987, pursuant to notice regularly given, a hearing was held before the Commission to address whether the public convenience and necessity requires the construction of the proposed transmission facilities.

DISCUSSION

Utah Power proposed to construct 345 kV transmission facilities from its Sigurd Substation to the Utah-Nevada border in order to interconnect with the Nevada Power Company. Utah Power presented evidence that the proposed facilities will give Utah Power access to a new market for both firm and non-firm surplus power and that, in addition, the proposed line will improve the reliability and stability of Utah Power's transmission system.

Utah Power witness V. R. Topham testified that Utah Power has entered into a Power Sales Agreement with Nevada Power Company which, in combination with the need to assure reliable service to Utah Power's retail, wheeling, and wholesale customers, makes it necessary to proceed with construction of the proposed line. Utah

Power witness D. L. Eldredge testified that the revenues generated during the first nine years of the sales agreement will exceed, by $18.4 million, the costs associated with the sale, including the incremental cost of the proposed facilities.

Utah Power witness J. W. Comish testified that the proposed transmission facilities could produce surplus sales revenues in amounts from $3.4 million to $36.2 million. Finally, Utah Power witness J. D. Tucker presented evidence that the proposed facilities will enhance the reliability of service to southwestern Utah and will enable Utah Power to meet its service obligations with one line out of service, in contrast to the current radial service in that area.

Division of Public Utilities' witness R. Pierce also testified that the Utah Power ratepayers would receive benefits if the proposed facilities are constructed. Mr. Pierce presented evidence that the revenue requirement for Utah Power's Utah jurisdiction would decline as a result of the firm sale to Nevada Power Company and as a result of the surplus sales revenues associated with the proposed line.

Mr. Pierce recommended that the Commission order Energy Balancing Account ("EBA") treatment of the revenue from the Utah Power generated portion of summer peaking sales to Nevada Power Company under the sales agreement. Utah Power witness R. R. Dalley disagreed with Mr. Pierce's recommendation and presented testimony that the sale to Nevada Power Company was a firm sale and should not be included in the EBA. Both witnesses agreed that

the EBA issue could more properly be addressed in an EBA proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Utah Power is subject to the jurisdiction of this Commission pursuant to Section 54-1-1. et seq., U.C.A.

2. Utah Power has applied to this Commission for a Certificate of Convenience and Necessity to construct a 345 kV transmission line pursuant to Section 54-4-25 U.C.A.

3. Utah Power has entered into a Power Sales Agreement with Nevada Power Company. In order for UP&L to provide service under said agreement it must construct a 345 kV transmission line from Utah Power's Sigurd Substation to the Utah-Nevada border.

4. The construction of the proposed transmission facilities is also required to enable Utah Power to provide more reliable service to its customers in southwestern Utah.

5. The construction of the proposed facilities will provide access to new firm and surplus power markets.

6. The Power Sales Agreement between Nevada Power Company and Utah Power provides for termination unless approval by this Commission of the proposed transmission facilities is obtained by December 1, 1987, and the Transmission Facilities Agreement between Utah Power and Nevada Power Company requires Utah Power to provide the proposed facilities by June 1, 1990.

7. The present and future public convenience and necessity requires the construction of the proposed transmission facilities.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

1. Utah Power is granted a Certificate of Convenience and Necessity for its proposed transmission facilities.

2. Utah Power is ordered to immediately begin engineering and construction of the proposed facilities in order to have the proposed facilities in operation by June 1, 1990.

3. The Commission recognizes that UAMPS and DG&T seek an ownership interest in this line and further maintain that this certificate should be conditioned on their being granted such an ownership interest. The Commission further recognizes that the Utility Shareholder Association maintains that this Commission has no authority to order such an ownership interest or to condition the certificate on the grant thereof. The Commission further recognizes that Nevada Power Company and Utah Power require a decision authorizing the construction of this line by December 1, 1987.

4. Accordingly, this order authorizing such construction, expressly does not alter the status quo with respect to the joint use and ownership issues as established in the Order dated March 3, 1987, in Case Nos. 85-2011-01 and 87-999-08. All issues regarding potential joint use or ownership in the subject 345 kV transmission facilities and associated 138 kV system will be considered in a separate part (Phase II) of this proceeding in the event the parties are unable to reach an agreement. All issues respecting the Commission's jurisdiction to order such use or

ownership are reserved for consideration in such proceeding. The parties should continue negotiations and report the status of the same.

5. In order to preserve the rights of all parties in Phase II, the Commission will maintain said joint use or ownership issues as a part of Phase II of this certificate proceeding, and will reserve the ability to attach terms and conditions to this certificate as it deems appropriate and in the public interest at the conclusion of Phase II or successful negotiations of the parties.

6. Issues involving the proposed accounting treatment of the revenue from the Utah Power generated portion of summer peaking sale by Utah Power to Nevada Power Company will be addressed in a future appropriate proceeding.

7. A prehearing conference to set hearing dates in the joint ownership proceeding will be held at 9:00 a.m. on December 8, 1987, at the Commission Hearing Room, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

DATED at Salt Lake City, Utah, this 1st day of December, 1987.

/s/ Brian T. Stewart, Chairman

(SEAL)

/s/ Brent H. Cameron, Commissioner

/s/ James M. Byrne, Commissioner

Attest:

/s/ Stephen C. Hewlett
Commission Secretary

Exhibit F

(3) The words "local authority," "restaurant," and "person," as used herein, shall have the meaning set forth in Section 32-1-3 of the Liquor Control Act.

(4) A license issued under the provisions of this section shall constitute consent of the local authority within the meaning of the Liquor Control Act and Article I, Chapter 6, of Title 16. 1977

11-10-2. Qualifications of licensee.

No license shall be granted unless licensee shall be of good moral character, over the age of twenty-one years and a citizen of the United States, or to anyone who has been convicted of a felony or misdemeanor involving moral turpitude; or to any partnership or association, any member of which lacks any of the qualifications hereinbefore in the paragraph set out, or to any corporation, if any director or officer of same lacks any such qualification.

The licensing authority shall before issuing licenses satisfy itself by written evidence executed by the applicant that he meets the standards set forth. 1959

11-10-3. License fee

The license fee shall not exceed $300.00. 1959

11-10-4. Ordinances making it unlawful to operate without license.

All cities, towns and counties granting licenses under this act are specifically granted authority to adopt ordinances making it unlawful to operate such establishments without being licensed. 1959

CHAPTER 11

CIVIC AUDITORIUM AND SPORTS ARENA DISTRICTS

(Unconstitutional)

11-11-1 to 11-11-39. Unconstitutional.

Backman v. Salt Lake County, 13 Utah 2d 412, 375 P.2d 756 (1962). 1962

CHAPTER 12

MODIFICATION OF POLITICAL SUBDIVISIONS

Section

11-12-1. Incorporation, establishment or modification of boundaries of political subdivisions — Notice to tax commission.

No county service area, special purpose district, city, or town may be incorporated, established, or the boundaries modified, without a notification of the change being filed with the State Tax Commission within ten days after the conclusion of the proceedings in connection with the change.

The notice shall include an ordinance or resolution with a map or plat that delineates a metes and bounds description of the area affected and evidence that the information has been recorded by the county recorder. The notice shall also contain a certification by the officers of the county service area, special purpose district, city, or town that all the necessary legal requirements relating to incorporation, establishment, or modification have been completed. 1988

11-12-2. Definitions.

County service areas are all areas created pursuant to the County Service Area Act. Special purpose districts shall include all political subdivisions of this state except school districts, cities, towns and counties. 1963

11-12-3. Imposition of taxes on property in new or modified taxing district — Notification.

Property annexed to any existing taxing entity or property in any new taxing entity shall carry any tax rate imposed by that taxing entity if notification, as required by Section 11-12-1, is made to the State Tax Commission not later than December 31 of the previous year. 1988

CHAPTER 13

INTERLOCAL CO-OPERATION ACT

Section

Section

11-13-1. Short title.

This act may be cited as the "Interlocal Co-operation Act." 1965

11-13-2. Purpose of act.

It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to co-operate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities and to provide the benefit of economy of scale, economic development and utilization of natural resources for the overall promotion of the general welfare of the state. 1977

11-13-3. Definitions.

As used in this chapter:

(1) "Public agency" means any political subdivision of this state, including, but not limited to, cities, towns, counties, school districts, and special districts of various kinds; the state of Utah or any department, division, or agency of the state of Utah; any agency of the United States; and any political subdivision of another state.

(2) "State" means a state of the United States and the District of Columbia.

(3) "Board" means the Permanent Community Impact Fund Board created by Section 63-52-2, and its successors.

(4) "Candidate" means the state of Utah and any county, municipality, school district, special district, or any other political subdivision of the state of Utah or its duly authorized agent or any one or more of the foregoing.

(5) "Direct impacts" means an increase in the need for any public facilities or services which is attributable to the project, except impacts resulting from the construction or operation of any facility owned by others which is utilized to furnish fuel, construction, or operation materials for use in the project.

(6) "Facilities", "services", or "improvements" mean facilities, services, or improvements of any kind or character provided by a candidate with respect to any one or more of the following:

(a) flood control;
(b) storm drainage;
(c) government administration;
(d) planning and zoning;
(e) buildings and grounds;
(f) education;
(g) health care;
(h) parks and recreation;
(i) police and fire protection;
(j) transportation;
(k) streets and roads;
(l) utilities;
(m) culinary water;
(n) sewage disposal;
(o) social services;
(p) solid waste disposal; and
(q) economic development or new venture investment fund.

(7) "Project" means an electric generating and transmission project owned by a legal or administrative entity created under this chapter and shall include any electric generating facilities, transmission facilities, fuel or fuel transportation facilities, or water facilities owned by that entity and required for that project.

(8) "Project entity" means a legal or administrative entity created under this chapter which owns a project and which sells the capacity, services, or other benefits from it.

(9) "Facilities" and "improvements" includes entire facilities and improvements or interests in facilities or improvements. 1986

11-13-4. Joint exercise of powers, privileges or authority by public agencies authorized.

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privileges or authority, and jointly with any public agency of any other state or of the United States permit [sic] such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency. 1965

11-13-5. Agreements for joint or co-operative action — Resolutions by governing bodies required.

Any two or more public agencies may enter into agreements with one another for joint or co-operative action pursuant to this act. Adoption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any such agreement may enter into force. 1977

11-13-5.5. Contract by public agencies to create new entities to provide services — Powers and duties of new entities — Generation of electricity.

(1) Any two or more public agencies of the state of Utah may also agree to create a separate legal or administrative entity to accomplish the purpose of their joint or cooperative action, including the undertaking and financing of a facility or improvement to provide the service contemplated by such agreement A separate legal or administrative entity is considered to be a political subdivision of the state with power to

(a) own, acquire, construct, operate, maintain, *and repair or cause to be constructed, operated,* maintained, and repaired any facility or improvement set forth in such an agreement,

(b) borrow money or incur indebtedness, issue revenue bonds or notes for the purposes for which it was created, assign, pledge, or otherwise convey as security for the payment of any such bonded indebtedness, the revenues and receipts from such facility, improvement, or service, which assignment, pledge, or other conveyance may rank prior in right to any other obligation except taxes or payments in lieu thereof as hereinafter described, payable to the state of Utah or its political subdivisions, or

(c) sell or contract for the sale of the product of the service, or other benefits from such facility or improvement to public agencies within or without the state on such terms as it considers to be in the best interest of its participants

(2) Any entity formed to construct any electrical generation facility shall, at least 150 days before adoption of the bond resolution for financing the project, offer to enter into firm or withdrawable power sales contracts, which offer must be accepted within 120 days from the date offered or will be considered rejected, for not less than 50% of its energy output, to suppliers of electric energy within the state of Utah who are existing and furnishing service in this state at the time such offer is made, provided, however, that for any electrical generation facility for which construction commences after April 21, 1987, such offer shall be for not less than 25% of its energy output However, the demand by such suppliers or the amounts deliverable to any such supplier or a combination of them shall not exceed the amount allowable by the United States Internal Revenue Service in a way that would result in a change in or a loss of the tax exemption from federal income tax for the interest paid, or to be paid, under any bonds or indebtedness created or incurred by any entity formed hereunder In no event shall the energy output available for use within this state be less than 25% of the total output, provided, however, that for any electrical generation facility for which construction commences after April 21, 1987, such amount of energy output available within this state shall be not [illegible] 5% of the total output

(3) Subsection (2) applies only to the construction and operation of a facility to generate electricity 1987

11-13-5.6. Contract by public agencies to create new entities to own sewage and wastewater facilities — Powers and duties of new entities — Validation of previously created entities.

(1) It is declared that the policy of the state of Utah is to assure the health, safety and welfare of its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater treatment plants and facilities on a regional basis in accordance with federal law and state and federal water quality standards and effluent standards in order to provide services to public agencies is a matter of statewide concern and is in the public interest It is found and declared that there is a statewide need to provide for regional sewage and wastewater treatment plants and facilities, and as a matter of express legislative determination it is declared that the compelling need of the state for construction of regional sewage and wastewater treatment plants and facilities requires the creation of entities under the Interlocal Co-operation Act to own, construct, operate and finance sewage and wastewater treatment plants and facilities, and it is the purpose of this law to provide for the accomplishment thereof in the manner provided in this Section 11-13-5 6

(2) Any two or more public agencies of the state of Utah may also agree to create a separate legal or administrative entity to accomplish and undertake the purpose of owning, acquiring, constructing, financing, operating, maintaining, and repairing regional sewage and wastewater treatment plants and facilities

(3) A separate legal or administrative entity created in the manner provided herein is deemed to be a political subdivision and body politic and corporate of the state of Utah with power to carry out and effectuate its corporate powers, including, but not limited to, the following

(a) To adopt, amend, and repeal rules, by-laws, and regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to have an official seal and power to alter that seal at will, and to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Interlocal Co-operation Act

(b) To own, acquire, construct, operate, maintain, repair or cause to be constructed, operated, maintained, and repaired one or more regional sewage and wastewater treatment plants and facilities, all as shall be set forth in the agreement providing for its creation

(c) To borrow money, incur indebtedness and issue revenue bonds, notes or other obligations payable solely from the revenues and receipts derived from all or a portion of the regional sewage and wastewater treatment plants and facilities which it owns, operates and maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the provisions of the Utah Municipal Bond Act

(d) To enter into agreements with public agencies and other parties and entities to provide sew-

age and wastewater treatment services on such terms and conditions as it deems to be in the best interests of its participants.

(e) To acquire by purchase or by exercise of the power of eminent domain, any real or personal property in connection with the acquisition and construction of any sewage and wastewater treatment plant and all related facilities and rights-of-way which its owns, operates, and maintains.

(4) The provisions of Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29, 11-13-30, 11-13-31, 11-13-32, 11-13-33, 11-13-34, 11-13-35, and 11-13-36 shall not apply to a legal or administrative entity created for regional sewage and wastewater treatment purposes under this Section 11-13-5.6.

(5) All proceedings previously had in connection with the creation of any legal or administrative entity pursuant to this chapter, and all proceedings previously had by any such entity for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and these entities are declared to be validly-created interlocal co-operation entities under this chapter. These bonds, whether previously or subsequently issued pursuant to these proceedings, are validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect. 1982

11-13-6. Agreements for joint or co-operative action — Required provisions.

Any such agreement shall specify the following:

(1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created. If a separate entity or administrative body is created to perform the joint functions, a majority of the governing body of such entity shall be constituted by appointments made by the governing bodies of the public agencies creating the entity and such appointees shall serve at the pleasure of the governing bodies of the creating public agencies.

(3) Its purpose or purposes.

(4) The manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(7) The price of any product of the service or benefit to the consumer allocated to any buyer except the participating agencies within the state, shall include the amount necessary to provide for the payments of the in lieu fee provided for in Section 11-13-25. 1977

11-13-7. Agreement not establishing separate legal entity — Additional provisions required.

In the event that the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement shall in addition to the items specified in Section 11-13-6, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking. 1965

11-13-8. Agreement does not relieve public agency of legal obligation or responsibility.

No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board of [or] other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility. 1965

11-13-9. Approval of agreements by authorized attorney.

Every agreement made under this chapter shall, prior to and as a condition precedent to its entry into force, be submitted to an attorney authorized by the public agency entering into the agreement who shall approve the agreement if it is in proper form and compatible with the laws of this state. 1987

11-13-10. Filing of agreements.

Prior to its entry into force, an agreement made pursuant to this act shall be filed with the keeper of records of each of the public agencies party thereto. 1965

11-13-11. Agreements between public agencies of state and agencies of other states or United States — Status — Rights of state in actions involving agreements.

In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liabilities which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure or performance, or other conduct caused or contributed to the incurring of damage or liability by the state. 1965

11-13-12. Agreements for services or facilities under control of state officer or agency — Approval by authorized attorney.

If an agreement made under this chapter deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall be approved by an authorized attorney under Section 11-13-9 and shall include a determination that the provision of services or facilities is authorized under applicable laws of this state. 1987

11-13-13. Appropriation of funds and aid to administrative joint boards authorized.

Any public agency entering into an agreement pur-

suant to this act may appropriate funds and may sell, lease, give, or otherwise supply tangible and intangible property to the administrative joint board or other legal or administrative entity created to operate the joint or co-operative undertaking and may provide personnel or services therefor as may be within its legal power to furnish. 1985

11-13-14. Contracts between public agencies or with legal or administrative entity to perform governmental services, activities or undertakings — Facilities and improvements.

Any one or more public agencies may contract with each other or with a legal or administrative entity created pursuant to this act to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties In order to perform such service, activity or undertaking, a public agency may create, construct or otherwise acquire facilities or improvements in excess of those required to meet *the needs and requirements of the parties to the con*tract In addition, a legal or administrative entity created by agreement under this act, may create, construct or otherwise acquire facilities or improvements to render service in excess of those required to meet the needs or requirements of the public agencies party to the agreement if it is determined by the public agencies to be necessary to accomplish the purposes and realize the benefits set forth in Section 11-13-2, provided, that any excess which is sold to other public agencies, whether within or without the state, shall be sold on terms which assure that the cost of providing the excess will be recovered by such legal or administrative entity 1977

11-13-15. Agreements for joint ownership, operation or acquisition of facilities or improvements authorized.

Any two or more public agencies may make agreements between or among themselves

(1) for the joint ownership of any one or more facilities or improvements which they have authority by law to own individually;

(2) for the joint operation of any one or more facilities or improvements which they have authority by law to operate individually,

(3) for the joint acquisition by gift, grant, purchase, construction, condemnation or otherwise of any one or more such improvements or facilities and for the extension, repair or improvement thereof,

(4) for the exercise by a legal or administrative entity created by agreement of public agencies of the state of Utah of its powers with respect to any one or more facilities or improvements and the extensions, repairs or improvements of them; or

(5) any combination of the foregoing 1977

11-13-16. Conveyance or acquisition of property by public agency authorized.

Any public agency may in carrying out the provisions of this act convey property to or acquire property from any other public agency for such consideration as may be agreed upon 1965

11-13-16.5. Sharing tax or other revenues.

Any county, city, town, or other local political subdivision may, *at the discretion of the local governing* body, share its tax and other revenues with other counties, cities, towns, or local political subdivisions. Any decision to share tax and other revenues shall be by local ordinance, resolution, or interlocal agreement 1984

11-13-17. Contracts — Term — Resolutions of governing bodies to authorize.

Any contract entered into hereunder shall extend for a term of not to exceed fifty years and shall be authorized by resolutions adopted by the respective governing bodies 1965

11-13-18. Control and operation of joint facility or improvement provided by contract.

Any facility or improvement jointly owned or jointly operated by any two or more public agencies or acquired or constructed pursuant to an agreement under this act may be operated by any one or more of the interested public agencies designated for the purpose or may be operated by a joint board or commission or a legal or administrative entity created for the purpose or through an agreement by a legal or administrative entity and a public agency receiving service of other benefits from such entity or may be con*trolled and operated* in some other manner, *all* as may be provided by appropriate contract Payment for the cost of such operation shall be made as provided in any such contract 1977

11-13-19. Bond issues by public agencies or by legal and administrative entities authorized.

Bonds may be issued by any public agency for the acquisition of an interest in any jointly owned improvement or facility or combination of such facility or improvement, or may be issued to pay all or part of the cost of the improvement or extension thereof in the same manner as bonds can be issued by such public agency for its individual acquisition of such improvement or facility or combination of such facility or improvement or for the improvement or extension thereof A legal or administrative entity created by agreement of two or more public agencies of the state of Utah under this act may issue bonds or notes under a resolution, trust indenture or other security instrument for the purpose of financing its facilities or improvements The bonds or notes may be sold at public or private sale, mature at such times and bear interest at such rates and have such other terms and security as the entity determines Such bonds shall not be a *debt of any public agency party to the agreement.* Bonds and notes issued under this act are declared to be negotiable instruments and their form and substance need not comply with the Uniform Commercial Code 1977

11-13-20. Publication of resolutions or contracts — Contesting legality of resolution or contract.

The adoption of the appropriate resolutions for the purpose of making contracts pursuant to this act need not be published No resolution adopted or proceeding taken hereunder shall be subject to referendum petition The governing body may provide for the publication of any resolution adopted by it pursuant to this act and for the publication of any contract authorized by it to be entered into hereunder in a newspaper published in the municipality or if no newspaper is so published, then in a newspaper having general circulation therein. For a period of thirty days after such

publication any person in interest shall have the right to contest the legality of such resolution or contract and after such time no one shall have any cause of action to contest the regularity, formality or legality thereof for any cause whatsoever. 1965

11-13-21. Repealed. 1975

11-13-22. Qualifications of officers or employees performing services under agreements.

Other provisions of law which may require an officer or employee of a public agency to be an elector or resident of the public agency or to have other qualifications not generally applicable to all of the contracting agencies in order to qualify for said office or employment shall not be applicable to officers or employees who hold office or perform services for more than one public agency pursuant to agreements executed under the provisions of the Interlocal Co-operation Act. 1967

11-13-23. Compliance with act sufficient to effectuate agreements.

When public agencies enter into agreements pursuant to the provisions of this act whereby they utilize a power or facility jointly, or whereby one political agency provides a service or facility to another, compliance with the requirements of this act shall be sufficient to effectuate said agreements. 1969

11-13-24. Privileges and immunities of public agencies extended to officers and employees performing services under agreements.

Officers and employees performing services for two or more public agencies pursuant to contracts executed under the provisions of this act shall be deemed to be officers and employees of the public agency employing their services even though performing said functions outside of the territorial limits of any one of the contracting public agencies, and shall be deemed officers and employees of said public agencies under the provisions of the Governmental Immunity Act. 1969

11-13-25. Payment of fee in lieu of ad valorem property tax by certain energy suppliers — Method of calculating — Collection — Extent of tax lien.

(1) A project entity created under this chapter which owns a project and which sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Article XIII, Sec. 2, Utah Constitution from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section to each taxing jurisdiction within which the project or any part of it is located. The requirement to pay these fees shall commence: (a) with respect to each taxing jurisdiction that is a candidate receiving the benefit of impact alleviation payments under contracts or determination orders provided for in Sections 11-13-28 and 11-13-29, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the last generating unit of the project occurs; and (b) with respect to any other taxing jurisdictions, with the fiscal year of the taxing jurisdiction in which construction of the project commences. The requirements to pay these fees shall continue for the period of the useful life of the project.

(2) Because the ad valorem property tax levied by a school district represents both (i) a levy mandated by the state for the state minimum school program under Section 53A-17-106, and (ii) local levies for capital outlay, maintenance, transportation, and other purposes under Sections 11-2-7, 53A-16-104, 53A-16-105, 53A-16-107, 53A-16-110, 53A-17-107, 53A-17-108, 53A-17-110, 53A-17-113, and 53A-17-114, the annual fee in lieu of ad valorem property tax due a school district shall be as follows:

(a) The project entity shall pay to the school district a fee in lieu of ad valorem property tax for the state minimum school program at the rate required under Section 53A-17-106 and for the local incentive program under Section 53A-16-105; and

(b) The project entity shall pay to the school district either a fee in lieu of ad valorem property tax or impact alleviation payments under contracts or determination orders provided for in Sections 11-13-18 [11-13-28] and 11-13-29, for all other local property tax levies authorized.

(3) The fee due a taxing jurisdiction for a particular year shall be calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the taxable value for that year of the portion of the project located within the jurisdiction by the percentage of the project which is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers. As used in this section, "tax rate," when applied in respect to a school district, includes any assessment to be made by the school district under Subsection (2) or Section 63-51-6. There is to be credited against the fee due a taxing jurisdiction for each year, an amount equal to the debt service, if any, payable in that year by the project entity on bonds, the proceeds of which were used to provide public facilities and services for impact alleviation in the jurisdiction in accordance with Sections 11-13-28 and 11-13-29. The tax rate for the jurisdiction for that year shall be computed so as to: (a) take into account the taxable value of the percentage of the project located within the jurisdiction used to produce the capacity, service, or other benefit sold to the supplier or suppliers; and (b) reflect any credit to be given in that year.

(4) Except as otherwise provided in this section, the fees shall be paid, collected, and distributed to the taxing jurisdiction as if the fees were ad valorem property taxes and the project were assessed at the same rate and upon the same measure of value as taxable property in the state . The assessment shall be made by the State Tax Commission in accordance with rules promulgated by it. Payments of the fees shall be made from the proceeds of bonds issued for the project and from revenues derived by the project entity from the project; and the contracts of the project entity with the purchasers of the capacity, service, or other benefits of the project whose tangible property is not exempted by Article XIII, Sec. 2, Utah Constitution, from the payment of ad valorem property tax shall require each purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for, its share, determined in accordance with the terms of the contract, of these fees. It is the responsibility of the project entity to enforce the obligations of the purchasers.

(5) The responsibility of the project entity to make payment of the fees is limited to the extent that there is legally available to the project entity, from bond proceeds or revenues, monies to make these payments, and the obligation to make payments of the

fees are not otherwise a general obligation or liability of the project entity. No tax lien may attach upon any property or money of the project entity by virtue of any failure to pay all or any part of the fee. The project entity or any purchaser may contest the validity of the fee to the same extent as if the payment were a payment of the ad valorem property tax itself. The payments of the fee shall be reduced to the extent that any contest is successful. 1988

11-13-26. Liability for sales and use taxes.

Notwithstanding the provisions of Section 59-12-104, a project entity created under this chapter is subject to state sales and use taxes. The sales and use taxes shall be paid, collected, and distributed in accordance with the provisions of law relative to the payment, collection, and distribution of sales and use taxes, including prepayment as provided in Chapter 51, Title 63. Project entities are authorized to make payments or prepayments of sales and use taxes, as provided in Chapter 51, Title 63, from the proceeds of revenue bonds issued pursuant to Section 11-13-19 or other revenues of the project entity. 1987

11-13-27. Hearing — Certificate of public convenience and necessity — Effective date.

Any political subdivision organized pursuant to this act before proceeding with the construction of any electrical generating plant or transmission line shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future. This section shall become effective for all projects initiated after the effective date hereof, and shall not apply to those for which feasibility studies were initiated prior to said effective date, including any additional generating capacity added to a generating project producing electricity prior to April 21, 1987, and transmission lines required and used solely for the delivery of electricity from such a generating project within the corridor of a transmission line, with reasonable deviation, of such a generating project producing as of April 21, 1987. 1987

11-13-28. Responsibility for alleviation of direct impact of project — Requirement to contract — Source of payment.

(1) A project entity is authorized to assume financial responsibility for or provide for the alleviation of the direct impacts of its project, and make loans to candidates to alleviate impacts created by the construction or operation of any facility owned by others which is utilized to furnish fuel, construction or operation materials for use in the project to the extent the impacts were attributable to the project. Provision for the alleviation may be made by contract as provided in Subsection (2) or by the terms of a determination order as provided in Section 11-13-29.

(2) Each candidate shall have the power, except as otherwise provided in Section 11-13-29, to require the project entity to enter into a contract with the candidate requiring the project entity to assume financial responsibility for or provide for the alleviation of any direct impacts experienced by the candidate. Each contract shall be for a term ending at or before the end of the fiscal year of the candidate who is party to the contract within which the date of commercial operation of the last generating unit of the project shall occur, unless terminated earlier as provided in Section 11-13-33, and shall specify the direct impacts or methods to determine the direct impacts to be covered, the amounts, or methods of computing the amounts, of the alleviation payments, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the services, and such other pertinent matters as shall be agreed to by the project entity and candidate.

(3) At the end of the fiscal year of the candidate who is a party to the contract within which the date of commercial operation of the last generating unit has begun, the project entity shall make in lieu ad valorem tax payments to that candidate to the extent required by, and in the manner provided in, Section 11-13-25.

(4) Payments under any impact alleviation contract or pursuant to a determination by the board shall be made from the proceeds of bonds issued for the project or from any other sources of funds available in respect of the project. 1980

11-13-29. Procedure in case of inability to formulate contract for alleviation of impact.

(1) In the event the project entity and a candidate are unable to agree upon the terms of an impact alleviation contract or to agree that the candidate has or will experience any direct impacts, the project entity and the candidate shall each have the right to submit the question of whether or not these direct impacts have or will be experienced, and any other questions regarding the terms of the impact alleviation contract to the board for its determination.

(2) Within 40 days after receiving a notice of a request for determination, the board shall hold a public hearing on the questions at issue, at which hearing the parties shall have an opportunity to present evidence. Within 20 days after the conclusion of the hearing, the board shall enter an order embodying its determination and directing the parties to act in accordance with it. The order shall contain findings of facts and conclusions of law setting forth the reasons for the board's determination. To the extent that the order pertains to the terms of an impact alleviation contract, the terms of the order shall satisfy the criteria for contract terms set forth in Section 11-13-28.

(3) At any time 20 or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms or payments. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer. 1980

11-13-30. Method of amending impact alleviation contract.

An impact alleviation contract or a determination order may be amended with the consent of the parties, or otherwise in accordance with their provisions. In addition, any party may propose an amendment to a contract or order which, if not agreed to by the other parties, may be submitted by the proposing party to the board for a determination of whether or not the

amendment shall be incorporated into the contract or order The board shall determine whether or not a contract or determination order shall be amended under the procedures and standards set forth in Sections 11-13-28 and 11-13-29 1980

11-13-31. Effect of failure to comply.

The construction or operation of a project may commence and proceed, notwithstanding the fact that all impact alleviation contracts or determination orders with respect to the project have not been entered into or made or that any appeal or review concerning the contract or determination has not been finally resolved The failure of the project entity to comply with the requirements of this act or with the terms of any alleviation contract or determination order or any amendment to them shall not be grounds for enjoining the construction or operation of the project 1980

11-13-32. Venue for civil action — No trial de novo.

(1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any order of the board, or any alleviation contract, shall be brought only in the District Court for the county within which is located the candidate to which the order or contract pertains If the candidate is the state of Utah, the action shall *be brought in the District Court for Salt Lake* County Any action brought in any judicial district shall be ordered transferred to the court where venue is proper under this section

(2) In any civil action seeking to challenge, enforce, or otherwise review, any order of the board, a trial de novo shall not be held The matter shall be considered on the record compiled before the board, and the findings of fact made by the board shall not be set aside by the district court unless the board clearly abused its discretion 1980

11-13-33. Termination of impact alleviation contract.

If the project or any part of it or the output from it shall become subject, in addition to the requirements of Section 11-13-25, to ad valorem property taxation or other payments in lieu of ad valorem property taxation, or other form of tax equivalent payments to any candidate which is a party to an impact alleviation contract with respect to the project or is receiving impact alleviation payments or means in respect of the project pursuant to a determination by the board, then the impact alleviation contract or the requirement to make impact alleviation payments or provide means therefor pursuant to the determination, as the case may be shall, at the election of the candidate, terminate In any event, each impact alleviation contract or determination order shall terminate upon the project becoming subject to the provisions of Section 11-13-25 Except that no impact alleviation contract or agreement entered by a school district shall terminate because of in lieu ad valorem property tax fees levied under Subsection 11-13-25(2)(a) or because of ad valorem property taxes levied under Section 53A-17-106 for the state minimum school program In addition, in the event that the construction of the project shall be permanently terminated for any reason, each impact alleviation contract and determination order, and the payments and means required thereunder, shall terminate except to the extent of any liability previously incurred pursuant to the contract or determination order by the candidate beneficiary under it If the provisions of Section 11-13-25, or its successor, are held invalid by a court of competent jurisdiction, and no ad valorem taxes or other form of tax equivalent payments shall be payable, the remaining provisions of this act shall continue in operation without regard to the commencement of commercial operation of the last generating unit of that project 1988

11-13-34. Impact alleviation payments credit against in lieu of ad valorem property taxes — Federal or state assistance.

(1) In consideration of the impact alleviation payments and means provided by the project entity pursuant to the contracts and determination orders, the project entity shall be entitled to a credit against the fees paid in lieu of ad valorem property taxes as provided by Section 11-13-25, ad valorem property or other taxation by, or other payments in lieu of ad valorem property taxation or other form of tax equivalent payments required by any candidate which is a party to an impact alleviation contract or board order

(2) Each candidate may make application to any federal or state governmental authority for any assistance that may be available from that authority to alleviate the impacts to the candidate To the extent that the impact was attributable to the project, any assistance received from that authority shall be cred*ited to the project's alleviation obligation in propor*tion to the percentage of impact attributable to the project, but in no event shall the candidate realize less revenues than would have been realized without receipt of any assistance

(3) With respect to school districts the fee in lieu of ad valorem property tax for the state minimum school program required to be paid by the project entity under Subsection 11-13-25(2)(a) shall be treated as a separate fee and shall not affect any credits for alleviation payments received by the school districts under Subsection 11-13-25(2)(a), or Sections 11-13-28 and 11-13-29 1983

11-13-35. Exemption from privilege tax.

Chapter 4, Title 59, does not apply to a project, or any part of it, or to the possession or other beneficial use of a project as long as there is a requirement to make impact alleviation payments, fees in lieu of ad valorem property taxes, or ad valorem property taxes, with respect to the project pursuant to this chapter 1987

11-13-36. Arbitration of disputes.

Any impact alleviation contract may provide that disputes between the parties will be submitted to arbitration pursuant to *Chapter 31, Title 78* 1980

CHAPTER 14

UTAH MUNICIPAL BOND ACT

Exhibit G

EXHIBIT "G"

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	VERIFIED APPLICATION Case No. 85-2011-01 Aug 2, 1985

Applicant Utah Associated Municipal Power Systems ("UAMPS") submits the following Verified Application for the Issuance of a Certificate of Convenience and Necessity authorizing the construction of a transmission line in southwestern Utah. A draft order approving this Application is found at Exhibit "A".

In support of its Application, UAMPS states as follows:

1. The exact name of applicant is Utah Associated Municipal Power Systems.

2. The principal office address of UAMPS is 8722 South 300 West, Sandy, Utah 84070.

3. UAMPS is an interlocal cooperative agency organized under the Utah Interlocal Co-operation Act. Photocopies of the bylaws and agreement for joint cooperation of UAMPS are attached as Exhibits "B" and "C" to this application.

4. A list of the officers and directors of UAMPS is attached as Exhibit "D".

8/2/18

5. UAMPS is engaged in the generation and sale of power for use by its member municipal power systems. A list of the members of UAMPS is attached as Exhibit "E".

6. UAMPS is submitting this Application under the authority of Utah Code Ann. §11-13-27. However, UAMPS does not, by this Application, concede the constitutionality of or otherwise waive its right to object to the foregoing statute.

7. UAMPS intends to cooperate fully with the Commission in connection with the Application and recognizes the need to determine whether the proposed transmission line is in the public interest. However, should the Application be denied, UAMPS will pursue any other means available under the law to construct and operate the line.

8. The Application consists of four parts: A description of the project, the need for the transmission line, the public interest considerations favoring UAMPS' construction and operation of the line, and UAMPS' ability to finance and construct the line.

PROJECT DESCRIPTION

9. The proposed line will be a 345 kV transmission line from the Intermountain Power Project ("IPP") generating station to St. George, Utah and will parallel the existing 500 kV DC line for approximately 194 miles. It will leave the DC line corridor near Gunlock Reservoir in Washington County, from

whence it will run approximately 18 miles to Mine Valley, the location of a substation that will step the voltage down from 345 kV to 138 kV. Two 138 kV lines will be built from Mine Valley to the City of St. George. There will be a connection to the existing UP&L 138 kV line at St. George to improve the reliability of service to Newcastle and Cedar City. The ability to backfeed from St. George to Cedar City will, for the first time, provide full redundancy in transmission capacity to all loads served off the 138 kV and 230 kV transmission systems south of Sigurd. A map showing the proposed route is attached as Exhibit "F".

10. The 345 kV line will be built with either wood poles or lattice steel towers pending economic and reliability analyses to be completed prior to final design. The conductor will be duplex 954 MCM ACSR. The 138 kV lines will use a wood tower design with single 477 MCM ACSR phase conductors.

11. The IPP terminus will tie to the existing IPP 345 kV bus. The Mine Valley terminus will consist of the 138 kV stepdown substation plus a 345 kV switching bus to tie to Nevada Power Company.

12. The right-of-way width for the line is 150 feet, which is typical for 345 kV lines on public lands. Existing access roads along the DC line will be used as much as possible for construction and maintenance, thereby reducing environmental impacts.

13. A major part of the alignment is within the previously accepted utility corridor for the IPP DC line. While this alignment will increase the overall project length, it will nonetheless satisfy the project goals of providing greater reliability to southern Utah than a line from Sigurd, at the same time minimizing any potential adverse environmental impact.

14. Completion of the project is scheduled for early 1987.

NEED FOR TRANSMISSION LINE

15. UAMPS members and UP&L customers in Millard, Beaver, Iron and Washington Counties suffer from inadequate transmission reliability. In particular, Washington County has a critical lack of capacity which, if not corrected in the very near future, will limit or preclude growth. For example, St. George had a winter peak last year of 60 MW. This summer, peak load has been about 40 MW to date. The existing 138 kV transmission line is not adequate for even 40 MW without substantial voltage support.

THE PUBLIC INTEREST

Competition With Utah Power & Light Company

16. UAMPS' construction of the southwest power line will enhance competition by driving utility rates toward cost and reducing the price of electricity to the consumer, including the UP&L ratepayer.

17. UAMPS' construction of the southwest power line will assure that transmission charges among utilities are more reasonable and that rates for transmission service between utilities in Utah are based on actual costs and market conditions. Otherwise, the utility monopolizing transmission service will have an unfair advantage over those desiring to wheel over the transmission lines.

18. UAMPS' construction of the southwest power line will help to lower rates to all electric consumers in Utah by providing the opportunity to assuring the use of the most efficient generating source for the power required by each municipality and utility taking service off the line. The additional transmission capacity have the potential to represented by a UAMPS line will allow the most efficient generating sources to be operated at optimum dispatchable levels. Overall costs of power generation will thereby be driven downward.

19. The UAMPS proposal to construct a 345 kV transmission line from the IPP switchyard to southwest Utah with a Nevada intertie is the first phase of a long-range plan to provide for a non-duplicative transmission grid within and through Utah other than that owned and operated by UP&L.

20. UAMPS is planning to develop a fully integrated transmission system with other utilities outside the State. As a result, UAMPS' construction of the southwest power line will

reduce the risk and associated expense caused by the unpredictable level and pattern of future demand for electricity in Utah. The line will give UAMPS the opportunity to buy and sell additional amounts of bulk power to and from other regions of the country, which will allow utilities in Utah to meet the demands of Utah consumers for electricity without constructing duplicative generating capacity.

21. The UAMPS transmission line will be the first major public-power owned transmission line constructed in Utah not committed directly to a generation plant. It will also be the first public-power or government owned transmission line in the State that can be used for wheeling of interstate power. The competition created by the line will provide a valuable yardstick measure of transmission wheeling costs and service and will thus allow for more informed regulatory judgments concerning wheeling.

22. The proposed line will provide a transmission path to UAMPS loads so that power can be purchased from alternative sources. The line will also provide interconnection with several Colorado other utilities via the Deseret Generation & Transmission Bonanza-Mona 345 kV line and a proposed Craig-Bonanza 345 kV line.

23. The line will provide for a tie to current southwestern Utah municipal markets that have requested from UAMPS both short- and long-term power supplies.

24. The construction of a UAMPS transmission facility will afford the opportunity to develop sales of surplus power by UAMPS to other utilities, thereby benefiting the southwestern cities and the members of UAMPS generally, which in turn will result in continued reduced rates to retail customers taking electricity from municipal systems.

25. Since UAMPS is not primarily concerned with achieving a high rate of return on its investments, wheeling costs on the proposed line will be held to a minimum. Wheeling will be made available to any qualifying entity at cost, including UP&L

26. UAMPS will make available to UP&L the advantage of wheeling rates at cost, which will make it advantageous to UP&L and its rate payers for UP&L to wheel on UAMPS' transmission line.

27. The UAMPS line will provide opportunity to construct smaller (138 kV) lines to municipal members in and near the southern part of the state instead of being forced to wheel over UP&L's system.

28. The UAMPS line will allow for delivery of IPP power to IPP participants in southwestern Utah through a non-Mona substation route, thereby avoiding additional wheeling charges by UP&L.

29. The line will allow for the possible wheeling of Colorado River Storage Project power to UAMPS members over and above that

established through arrangements with the Western Area Power Administration.

30. The UAMPS line will facilitate the eventual participation by other utilities in future IPP units.

#. Surplus capacity on the Southwest power line will be available to others who wish to use it to wheel power into or out of the State of Utah.

Reliability of Service

31. UAMPS has full capability to ensure that the line is properly operated and maintained at the most reliable and cost-effective level.

32. At present, power is supplied radially to St. George, with no backup available. A 345 kV line from IPP tied to Nevada Power Company would provide a more reliable source of power, since St. George could be served from Nevada if there is loss of power on the lines to the north.

33. If connected with Nevada Power Company, the proposed line will contribute less loop flow than the current UP&L proposed line and will thereby place less burden on a phase shifter. The proposed line will also contribute more to the stability and reliability of the Western System Coordinating Council grid than the UP&L line.

34. The line will enhance power pooling opportunities among the public power entities in the state, which will increase reliability by providing reserves and emergency power backup, and which will avoid interruptions caused by outages on

other utility systems. This will create a more fully integrated system.

35. UAMPS' construction of the southwest power line will enhance the general reliability of electric service in Utah, resulting in better electric service for all electric consumers. An additional transmission line interconnection between Nevada Power Company and the generating units owned by publicly owned utilities will result in less risk of power blackouts or brownouts.

36. The UAMPS proposal provides a second, geographically separate corridor to supply loads to southern Utah. Two lines in a single corridor (the routing method proposed by UP&L) are less reliable than two distantly separated lines. Natural disasters such as mudslides, wind damage, flooding, or range fires will commonly take out both lines in adjacent rights-of-way.

Service to Municipal Customers

37. The proposed line will serve municipal loads in Washington County, Utah, which, along with the rural electric cooperatives, will comprise about 95 percent of the loads in the county. The remaining loads are served by Utah Power & Light.

38. The line will allow service to both municipal UAMPS loads and present and future serve Iron County. The residents of Cedar City, the largest city in the county, have passed a referendum to purchase its power distribution system from UP&L. The line will facilitate providing competitively priced power to Cedar City once the system is owned by the city.

Avoidance of Subsidy by Utah Power & Light Ratepayers

39. If UAMPS owns and operates the line, the ratepayers in UP&L's Utah jurisdiction will not be required to subsidize the line. The subsidy arises from the fact that UP&L will serve about five percent of the loads in southwest Utah through its line, if it is constructed. The overwhelming majority of UP&L's customers live in other areas of the state and thus will realize no benefits from UP&L's construction of the line, although they will pay for it.

No Harm to Utah Power & Light Company System

40. The UAMPS line will not have an adverse impact on the UP&L system. In fact, ownership and operation of the line by UAMPS will increase the profitability of the UP&L system because (1) UP&L will not be spending the money to construct a line which will serve principally only non-UP&L loads, (2) UP&L will be able to serve its wholesale customers through wheeling

over the UAMPS lines at reduced wheeling costs, and (3) UP&L will be able to upgrade the reliability of its system through the additional transmission capacity afforded by the UAMPS line without significant expenditures.

41. The foregoing benefits to UP&L would be enhanced should UP&L elect to participate in joint ownership of the line.

Availability of Joint Ownership

42. UAMPS is willing to allow joint ownership of the line to any party which desires such ownership and is willing to pay its share of the costs. In particular, UAMPS is willing to allow UP&L to participate in the construction and operation of the line to the extent of 100 megawatts capacity, with UAMPS retaining management control.

43. UP&L has publicly stated it will not allow others, including UAMPS, to participate in ownership of the line if it is built by UP&L, nor will it participate in the UAMPS proposal. Therefore, if UP&L builds the line, the full cost and risk of the line will be borne by the UP&L ratepayer.

Better Wheeling Capacity

44. The line will provide the capability to wheel 100 MW to Nevada Power Company without affecting UAMPS' ability to meet current and future municipal load requirements in southwestern Utah.

45. Surplus capacity on the southwest power line will be available to others who wish to use it to wheel power into or out of the State of Utah.

Lower Construction Costs

46. UAMPS is required by law to seek competitive bids for material and labor in connection with the construction of the transmission project. This will allow for construction at a considerable cost savings over the procedures used by UP&L, which are not governed by the same requirements. This bidding procedure will also give UAMPS a greater measure of project cost control.

Environmental and Land Use Considerations

47. The use of a previously designated transmission corridor paralleling the 500 kV DC transmission line under construction for IPP will allow UAMPS to use existing access roads, minimize visual impacts, and avoid historical, archeological, and environmentally sensitive areas. On the other hand, UP&L's primary transmission route will have a significant adverse impact on visual resources, particularly along Interstate Highway 15 and Black Ridge.

48. UP&L's proposed alignment will impact the Iron Springs Recreation and Public Purposes lease site, as well as

create major land use conflicts around the Quail Creek Reservoir site, Harrisburg Junction, and Hurricane City. Impact is also expected on lands near Anderson Junction where residential development is planned. The UP&L line would significantly impair plans for an airport and residential development in the Harrisburg Junction area.

Approvals

49. The Washington County Planning Commission has granted UAMPS a Conditional Use Permit, whereas UP&L's application has been rejected by the Commission several times.

50. The Conditional Use Permits from Iron and Millard Counties should be secured shortly following this filing. In addition, no problem with a Conditional Use Permit is expected in Beaver County.

51. UP&L's alignment proposal is based on the assumption that the IPP 230 kV right-of-way corridor previously granted as part of the original project site will be available to UP&L. However this right-of-way has not been relinquished or transferred by IPP.

ABILITY TO FINANCE AND CONSTRUCT THE LINE

52. UAMPS is a joint action agency organized and formed under the Interlocal Cooperation Act, Utah Code Ann., Title 11, Article 13, which specifically allows for the joint municipal development of electrical transmission projects.

53. UAMPS' Articles of Incorporation and By-Laws authorize UAMPS to enter into projects for the development, construction, or purchase of electric transmission and generation facilities.

54. UAMPS, as a political subdivision of the State of Utah, is legally authorized to issue tax-exempt municipal bonds for the financing of projects, which result in lower financing costs.

55. In 1982, UAMPS issued $66,000,000 in bonds in order to purchase 14.581% of the Hunter II Generating Station from Utah Power & Light. In 1985, UAMPS issued another $77,000,000 in bonds in a defeasance of the $66,000,000 issue. UAMPS' bond rating is A/A-.

56. Bonds issued to finance the transmission line will be revenue bonds, requiring the pledge of participating municipalities to set rates sufficient to cover the cost of the project.

57. UAMPS is required to secure the approval of the elected officials of its member municipalities before constructing the line. The feasibility and desirability of the project will facilitate the written approval of the mayor and city council of each of UAMPS' member municipalities participating in the transmission project.

58. UAMPS' ability to issue tax-exempt, municipal bonds, covered by a pledge of revenues, will give UAMPS the ability to recover costs of design, development, construction, operation and maintenance of the line.

WHEREFORE, Applicant UAMPS requests that the Commission determine that the public convenience and necessity require the issuance of a certificate of convenience and necessity authorizing UAMPS to construct and operate its proposed transmission line in southwest Utah.

DATED this 23 day of August, 1985.

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By _____
Carolyn S. McNeil
General Manager

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By _____
James A. Holtkamp
S. Robert Bradley
Attorneys for Utah Associated Municipal Power Systems
50 South Main, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

VERIFICATION

STATE OF UTAH)
ss.
COUNTY OF SALT LAKE)

Carolyn S. McNeil, of lawful age, being first duly sworn, deposes and states:

1. I am the General Manager of Utah Associated Municipal Power Systems and am authorized to execute this Verification in behalf of Applicant.

2. I have read the foregoing Application, including all attachments, and the same are true and accurate to the best of my knowledge and belief.

Carolyn S. McNeil

Subscribed and sworn to before me this 30th day of August, 1985.

Notary Public
Residing at Salt Lake County, Utah

My Commission Expires:

1-27-87

6447H
071685

Exhibit H

EXHIBIT "H"

DOCKETED

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of the UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS for Issuance of a Certificate of Convenience and Necessity Authorizing the Construction of a Transmission Line in Southwestern Utah.	)	CASE NO. 85-2011-01
	)	ORDER GRANTING MOTION TO AMEND APPLICATION
In the Matter of the Proposed Construction of Transmission Facilities by UTAH POWER & LIGHT COMPANY and/or UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, and DESERET GENERATION AND TRANSMISSION COOPERATIVE and ST. GEORGE CITY.	)	CASE NO. 85-999-08

ISSUED: October 24, 1985

Appearances:

Sidney G. Baucom Thomas W. Forsgren Rosemary Richardson	For	Utah Power & Light Company
Michael Ginsberg, Assistant Attorney General	"	Division of Public Utilities, Department of Business Regulation, State of Utah
James A. Holtkamp S. Robert Bradley	"	Utah Associated Municipal Powers System
Donald B. Holbrook L. R. Curtis, Jr. Elizabeth M. Haslam	"	Utility Shareholders Association of Utah
Lynn Mitton	"	Deseret Generation & Transmission Cooperative
David Christensen, Assistant Attorney General	"	Utah Energy Office

Patrick J. Oshie Brian W. Burnett, General	"	Committee of Consumer Services

By the Commission:

On Tuesday, October 15, 1985 the Motion of the Utah Associated Municipal Power Systems ("UAMPS") for leave to File Amended Verified Application came on regularly for hearing along with certain constitutional and related questions in connection with the UAMPS Application. Also before the Commission were Motions by the Utah Energy Office ("UEO"), the Utility Shareholder Association (the "Shareholders") and the Utah Attorney General's Office (the "Attorney General") for intervention in the above-numbered and entitled matters, as well as the issue of the consolidation of these two matters.

In addition the Commission had intended to hear argument on the question of whether or not UP&L should be compelled to present an affirmative case for approval of its plans to construct transmission facilities through Southern Utah. However, the Company has agreed in a letter to the Commission to present its case and the matter is, therefore, moot unless UP&L shall fail to make a full presentation of facts.

On Tuesday, October 22, 1985, the Motion of The Division of Public Utilities (Division) to consolidate

Cases 85-2011-01 and 85-999-08 came on regularly for hearing.

By its Motion, UAMPS seeks authorization to delete parts of its original Application, renumber one paragraph and add the City of St. George to the list of UAMPS member cities. UAMPS alleges that the changes will not introduce any new claim, request or factual allegation. Rather, the changes will reflect the changing by UP&L of the routing of its proposed transmission line, the misinterpretation by UP&L and the Shareholders of certain statements contained in the original Application and the addition of St. George as a member of UAMPS.

Our examination of the proposed changes contained in the Amended Application leads us to believe that the intent of the changes is to eliminate any hint or suggestion that UAMPS intends to compete with UP&L as a broker of electrical energy rather than simply supplying the needs of its member cities in Southern Utah. It appears to us to be a somewhat disingenuous attempt by UAMPS to cover its real motives in seeking to build the proposed transmission line, in light of the statements made in UAMPS' original application and the rather strong and unequivocal statements of UAMPS officials quoted in the news media concerning that entity's intentions to

compete with UP&L in the wholesale energy market.

Notwithstanding our dislike for an action that appears less than bona fide, we see nothing to be gained by refusing UAMPS the privilege of amending its Application, at least at this early stage of the case. It appears to us that the question of whether or not UAMPS would be acting ultra vires in brokering power and competing for customers with UP&L is at present not ripe for our consideration and we shall not attempt to issue a declaratory judgment. Certainly as this case develops before us, we will attend to the question of whether or not the size of the transmission line proposed by UAMPS substantially exceeds the requirements of its members. Furthermore, we note that at present there already pends before the District Court a lawsuit filed by UP&L which raises the issue of whether or not UAMPS would be acting ultra vires by competing with UP&L.

We were also asked to consider the constitutionality of Utah Code Annotated 11-13-1, et seq. as it concerns the creation and functioning of UAMPS. A number of the parties have taken the position that the Commission may not decide the constitutionality of a regulatory statute but, rather, must give it an irrebuttable presumption of constitutionality. We believe

that position ignores the fact that this Commission is vested not only with legislative and executive functions but with judicial functions as well. In the case of Utah Department of Administrative Services v. Public Service Commission of Utah, 658 P. 2d 601 (1983), known as Wexpro II, the Supreme Court expressed clearly its view that the Commission might well be forced to construe statutory and constitutional language in order to reach a decision in a case. (Wexpro II at 608). For us to plunge ahead blindly with a case in the face of obvious constitutional difficulties would be uneconomic and wasteful for us and the parties. Certainly we presume in every case before us that the statutory enactments of the Legislature are constitutional but such a presumption is not irrebuttable. See e.g. Bordens Farm Products Co., Inc. v. Baldwin, 293 U.S.194 (1934).

Although we conclude that we can, where necessary, consider constitutional issues, we decline to set aside the presumption of constitutionality in this case because we are not persuaded by the parties that it is warranted.

With respect to the proposed intervention of various parties, we will allow the Shareholders and the UEO to intervene and postpone for further argument the

issue of whether or not it is proper and useful for the Office of the Attorney General to appear before us in this case beyond its representation of many of the parties (Division, Committee and UEO) already before us. Such an appearance raises the additional issue of whether or not the Attorney General may properly represent the Commission in connection with this case at some later time.

Finally, the Commission can find no good reason why these two cases should not be joined for all purposes. The Commission will consider the further consolidation of Case No. 85-035-08, involving UP&L's sale of a portion of its Hunter 3 generating unit to Nevada Power Co., at such time as the application for approval is submitted.

Based upon the foregoing, the Commission will make the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. UAMPS Motion for Leave to File Amended Verified Application be and the same is hereby granted.

2. The Motion of the Shareholders and the UEO for Leave to Intervene are hereby granted.

3. Cases 85-2011 and 85-999-08 are hereby joined for all purposes.

DATED at Salt Lake City, Utah, this 24th day of October, 1985.

Brent H. Cameron, Chairman

James M. Byrne, Commissioner

Brian T. Stewart, Commissioner

Attest:

Georgia B. Peterson
Executive Secretary

Exhibit I

EXHIBIT "I"

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	)	Case No. 85-2011-01
IN THE MATTER OF THE PROPOSED CONSTRUCTION OF TRANSMISSION FACILITIES BY UTAH POWER & LIGHT AND/OR UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS AND DESERET TRANSMISSION AND GENERATING COOPERATIVE AND ST. GEORGE CITY	)	Case No. 85-999-08 SECOND AMENDED VERIFIED APPLICATION

The Utah Associated Municipal Power Systems ("UAMPS") hereby submits this Second Amended Verified Application pursuant to the order of the Public Service Commission (the "Commission") issued from the bench on January 3, 1986 in the captioned matters. In support of this Second Amended Verified Application, UAMPS states:

1. UAMPS incorporates by reference the Amended Verified Application dated October 15, 1985. This Second Amended Verified Application is supplemental to the Amended Verified Application.

2. As an alternative to the proposed 345 kV line described in the Amended Verified Application, UAMPS proposes

the construction and operation of a 230 kV line as described herein for the purpose of providing service to its members in Southwestern Utah.

3. The 230 kV line would consist of a tap of the existing IPP 230 kV bus, a 230 kV wood pole transmission line from IPP to Middleton, a 230 to 138 kV substation at Middleton near the existing Utah Power & Light Company substation, and a 138 kV line through St. George to a new 138 KV to 69 kV substation to be located in south St. George.

4. Without an interconnection to another utility, the line will have a capacity of approximately 150 megawatts. With an interconnection to another utility, the line will have a capacity of approximately 200 megawatts.

5. The total estimated cost of the 230 kV line as described in paragraph 3 above is $35,000,000.00.

6. Without an interconnection to another utility, the 230 kV line will provide radial service. Construction of the line may improve the reliability of service to the existing load by providing a second feed to the existing load in the event of an outage on the existing line. In addition, with an interconnection to another utility, a full dual feed service will be provided to the St. George area. Possible interconnections could be made with the existing Utah Power & Light Company 230 kV line near Cedar City or with Nevada Power Company or both.

7. The current and future loads of the municipal power systems to be served on the 230 kV line are set forth in the testimony of Douglas O. Hunter, attached hereto as Exhibit A and by this reference made a part hereof.

8. Deseret Generation and Transmission Cooperative ("DG&T") will use 25 percent of the capacity on the 230 KV line pursuant to an exchange of capacity rights with UAMPS and the Bonanza Transmission System connected with DG&T's power plant. The final exchange agreement is still under negotiation, although both the UAMPS Board of Directors and the DG&T Board of Directors have approved the exchange. The amount of capacity to be exchanged by UAMPS and DG&T is described in Mr. Hunter's Testimony (Exhibit A).

9. With the use of 25 percent of the line by DG&T, UAMPS will have available for use by its members from approximately 112 to 150 megawatts, depending on whether there is an interconnection to another utility.

10. The line will be sufficient to serve UAMPS' members' power requirements through the year 2003, as shown on Exhibit DOH-3, attached to Mr. Hunter's testimony (Exhibit A).

11. The 230 kV line is economically feasible when constructed and operated by UAMPS as indicated in Mr. Hunter's testimony (Exhibit A).

12. A great deal of the work performed by Black & Veatch in connection with the proposed 345 kV line is directly transferable to the design of a 230 kV line. There will be no difference in the construction schedule for the 345 kV line as proposed by UAMPS in the Amended Verified Application and the 230 kV line proposed herein. Subject to timely regulatory approval, the line can be completed by the 1987-88 heating season.

13. The 230 kV line will use the proposed right-of-way corridors already under consideration by the Bureau of Land Management.

14. A 230 kV line owned and operated by UAMPS will provide net benefits both to the rate payers of Utah Power & Light Company and to electric customers in the state of Utah generally, as described in detail in Dr. George Compton's prefiled testimony, which is attached hereto as Exhibit B.

WHEREFORE, UAMPS hereby respectfully requests that the Commission approve either the 345 kV line proposal described in the Amended Verified Application or the 230 kV line proposal described in this Second Amended Verified Application.

DATED this 10th day of January, 1986.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By James Holtkamp

James A. Holtkamp
Robert A. Peterson
David L. Deisley
Attorneys for UAMPS
50 South Main, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

VERIFICATION

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

Douglas O. Hunter, of lawful age, being first duly sworn, deposes and states:

1. I am the Manager of Municipal Resources of Utah Associated Municipal Power Systems and am authorized to execute this Verification in behalf of Applicant.

2. I have read the foregoing Second Amended Verified Application, including all attachments, and the same are true and accurate to the best of my knowledge and belief.

Douglas O. Hunter

Douglas O. Hunter

Subscribed and sworn to before me this 10th day of January, 1986.

Notary Public
Residing at Salt Lake County, Utah

My Commission Expires:
September 6, 1989

7087H
011086

EXHIBIT A

TO SECOND AMENDED

VERIFIED APPLICATION

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	)	Case No. 85-2011-01

PREFILED TESTIMONY AND EXHIBITS

OF

DOUGLAS O. HUNTER

TESTIFYING IN BEHALF OF

UTAH ASSOCIATED

MUNICIPAL POWER SYSTEMS

IN SUPPORT OF

ITS SECOND AMENDED

VERIFIED APPLICATION

January 10, 1986

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	TESTIMONY AND EXHIBITS DOUGLAS O. HUNTER Case No. 85-2011-01

QUESTION:

Please state your name.

ANSWER:

Douglas O. Hunter.

QUESTION:

Are you the same Douglas O. Hunter who filed testimony on October 31, 1985 in this case?

ANSWER:

Yes.

QUESTION:

What is the purpose of your testimony?

ANSWER:

The purpose of my testimony is to demonstrate the feasibility of the construction by UAMPS of a 230 kV line from IPP to St. George.

Douglas O. Hunter

QUESTION:

What do you conclude from your study of the feasibility of the UAMPS proposed line?

ANSWER:

Compared with the costs of wheeling power over the UP&L system to serve the UAMPS members in Southwestern Utah, construction and operation of a 230 kV line by UAMPS is feasible.

QUESTION:

Can you describe for us the feasibility analysis which you prepared to reach that conclusion?

ANSWER:

Yes. I have attached as exhibits two case studies presenting different cost projections for UAMPS members given the choice of building transmission or wheeling on the UP&L system. I have set forth below a line-by-line explanation of the two cases.

Exhibit DOH-3 describes the costs of transmitting power to Utah's Southwestern members over the UP&L system. Exhibit DOH-4 describes the costs of transmitting the same power to the same UAMPS members over a 230 kV line owned by UAMPS.

QUESTION:

How were the load projections derived?

ANSWER:

The first case (Exhibit DOH-3) and the second case (Exhibit DOH-4) show the same load figures. All loads are in excess of CRSP delivery under the UP&L/WAPA contract and are yearly peak loads.

The annual growth rates for each entity on which the projected peak loads are based are as follows:

UAMPS	3.42%
St. George	6.73%
Washington County	5.14%
Bountiful	3.42%
Payson	2.88%
Springville	2.88%

The "Washington County" category consists of the cities of LaVerkin, Ivins, Santa Clara and Washington.

The load growth for all entities is based upon historical data, except for the Washington County category, which was taken from the UP&L prefiled testimony.

QUESTION:

What is the basis for the selection of power sources in Exhibits DOH-3 and DOH-4?

ANSWER:

In Exhibit DOH-3, the figures in the Resource section are based on the assumptions that all of the UAMPS Hunter 2

power will be used and that the next source of power will be the five-year contract with Deseret Generation and Transmission (DG&T). Since this will not be enough, IPP power will be used to meet the UAMPS/Southwestern Utah members' needs in later years.

It is important to note that without transmission no other lower cost resource may be considered, since UP&L has not agreed to any wheeling through interconnections. The UP&L wholesale for resale power could be considered an alternative resource, except that there are uncertainties in the cost of power and the type of contract term that would have to be negotiated. Because of contract terms and cost escalation, I felt that IPP power would be a fairer representation of 1991 power costs.

The cost of power used by source are:

Source	Capacity	Energy
Hunter II	$17.22/kWh	20 mills/kWh
Bonanza	$13.58/kWh	20 mills/kWh
IPP	$24.05/kWh	17.2 mills/kWh

In Exhibit DOH-4 the same assumptions and costs were used, except that I assumed that the Rocky Mountain Generation Cooperative would sell power beginning in 1991 with the complètion of the Craig to Bonanza 345 kV line. I also assumed

that a limit of 70 MW will be negotiated with Rocky Mountain. The cost of the power from Rocky Mountain is estimated at $16/kW month for capacity and 17 mills/kWh for energy.

QUESTION:

How are the transmission costs in Exhibits DOH-3 and DOH-4 derived?

ANSWER:

In Exhibit DOH-3 all power is wheeled over UP&L lines at a cost of $27.17 per kW year. This is the cost used in the Nevada Power contract. This value is inflated at 3% per year. It should be noted that the current cost to wheel through UP&L is different at each delivery point on the system and is much higher than the $27.17 cost in the Washington and Iron County area.

In Exhibit DOH-4 the assumption of wheeling over UP&L lines is also used until 1988, when the UAMPS 230 kV line is completed from IPP to St. George. Also at this time a trade is made for capacity in the DG&T 345 kV line from Mona to Bonanza. The investment for each line segment is based upon the following assumptions.

Line Segment	Capital Investment	Capacity
IPP-St. George	$35,000,000	150 MW
DG&T	$10,800,000	70 MW

Douglas O. Hunter

Part of the $10,800,000 capital investment in the DG&T line is represented in a trade of ownership of 25% of the UAMPS line to St. George ($8,800,000) plus an additional $2,000,000. This gives a net total investment on the part of UAMPS of $37,000,000. In order to wheel across the IPP Northern Transmission System (NTS) UAMPS, through its member municipal systems' entitlements in IPP, must call back a portion of IPP power. The calculation is based upon power needs in the Washington County area and is equal to 25% of the actual need. In all cases this is less than the need for actual power.

In 1991 the 345 KV line between Craig and Bonanza is expected to be completed by WAPA. UAMPS' share of that line is assumed to be 70 MW at a capital investment of $7,500,000.

QUESTION:

What, then, do Exhibits DOH-3 and DOH-4 demonstrate?

ANSWER:

The final section in both exhibits is the actual yearly dollar costs and the monthly rates to collect the revenue. The main point here is that both cases come up with approximately equal cash output. Ownership of the line by UAMPS provides the best opportunity for reduced costs in the future and gives the control that it needs to provide the most economical power to its members.

Douglas O. Hunter

QUESTION:

Does this conclude your testimony?

ANSWER:

Yes.

POWER COSTS BASED ON WHEELING OVER UP&L SYSTEM

) TRANS.	01/09/86									
IDS (MW)	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*
IPS	48	50	52	55	57	60	61	63	65	67
GEORGE	26	29	32	36	40	45	47	49	52	54
H. COUNTY	15	16	17	18	19	20	21	22	23	24
NTIFUL	12	12	12	14	14	15	15	16	16	17
SON	3	3	3	3	4	4	4	4	4	4
INGVILLE	3	3	3	3	4	4	4	4	4	4
TOTAL	107	114	121	129	137	147	152	158	164	171
OURCE (MW)										
TER II	54	54	54	54	54	54	54	54	54	54
ANZA	30	30	30	30	30	30	0	0	0	0
	23	30	37	45	53	63	98	104	110	117
TOTAL	107	114	121	129	137	147	152	158	164	171
MS. (MW)										
L	107	114	121	129	137	147	152	158	164	171
TOTAL	107	114	121	129	137	147	152	158	164	171
TS ($)										
ACITY	23,373,640	25,324,922	27,426,161	29,691,181	32,135,132	34,774,783	40,185,078	41,893,994	43,673,761	45,527,439
RGY	12,993,256	13,721,248	14,505,186	15,350,228	16,262,027	17,246,838	17,333,264	17,970,833	18,634,836	19,326,413
NSMISSION	3,052,550	3,342,799	3,663,445	4,018,010	4,410,461	4,845,269	5,184,333	5,547,627	5,936,923	6,354,119
TOTAL	39,419,446	42,388,969	45,594,793	49,059,419	52,807,620	56,866,890	62,702,675	65,412,454	68,245,520	71,207,971
$/KW/MO.	18.20	18.55	18.88	19.20	19.50	19.78	22.00	22.08	22.15	22.23
NS $/KW/MO	2.38	2.45	2.52	2.60	2.68	2.76	2.84	2.92	3.01	3.10
WH	19.40	19.27	19.14	19.02	18.91	18.81	18.19	18.16	18.12	18.09

I/O TRANS. LOADS (MW)	A1995A	A1996A	A1997A	A1998A	A1999A	A2000A	A2001A	A2002A	A2003A
AMPS	69	71	73	75	78	80	82	85	88
T. GEORGE	57	60	63	66	69	73	76	80	84
ASH. COUNTY	25	27	28	29	31	32	34	36	37
DUNTIFUL	17	18	18	19	19	20	21	21	22
AYSON	4	4	5	5	5	5	5	5	5
PRINGVILLE	4	4	5	5	5	5	5	5	5
TOTAL	177	184	192	199	207	215	224	233	242
ESOURCE (MW)									
TIER II	54	54	54	54	54	54	54	54	54
UNANZA	0	0	0	0	0	0	0	0	0
PP	123	130	138	145	153	161	170	179	188
TOTAL	177	184	192	199	207	215	224	233	242
RANS. (MW)									
P&L	177	184	192	199	207	215	224	233	242
TOTAL	177	184	192	199	207	215	224	233	242
OSIS ($)									
APACITY	47,458,318	49,469,802	51,565.384	53,748,816	56,024,023	58,394,959	60,865,952	63,441,447	66,126,033
NERGY	20,046,792	20,797,245	21,579,073	22,393,676	23,242,519	24,127,077	25,048,964	26,009,840	27,011,415
RANSMISSION	6,801,258	7,280,537	7,794,304	8,345,095	8,935,646	9,568,860	10,247,896	10,976,137	11,757,208
TOTAL	74,306,368	77,547,583	80,938,760	84,487,587	88,202,187	92,090,896	96,162,813	100,427,42	104,894,65
AP $/KW/MO.	22.29	22.36	22.42	22.49	22.55	22.60	22.66	22.71	22.76
RANS $/KW/MO	3.20	3.29	3.39	3.49	3.60	3.70	3.82	3.93	4.05
/MWH	18.05	18.02	17.99	17.96	17.93	17.90	17.88	17.85	17.82

POWER COSTS BASED ON UAMPS OWNERSHIP

TRANS. INVEST	01/09/86									
LOADS (MW)	A1985A	A1986A	A1987A	A1988A	A1989A	A1990A	A1991A	A1992A	A1993A	A199
UAMPS	49	50	52	55	57	60	61	63	65	
ST. GEORGE	26	29	32	36	40	45	47	49	52	
WASH. COUNTY	15	16	17	18	19	20	21	22	23	
BOUNTIFUL	12	12	12	14	14	15	15	16	16	
PAYSON	3	3	3	3	4	4	4	4	4	
SPRINGVILLE	3	3	3	3	4	4	4	4	4	
TOTAL	107	114	121	129	137	147	152	158	164	17
RESOURCE (MW)										
HUNTER II	54	54	54	54	54	54	54	54	54	5
TCKY MTN.							70	70	70	7
JOHANZA	30	30	30	30	30	30	0	0	0	
IPP	23	30	37	45	53	63	28	34	40	4
TOTAL	107	114	121	129	137	147	152	158	164	17
TRANS. (MW)										
UP&L	107	114	121	71	74	77	79	82	84	8
CONSTRUCTION				58	64	70	73	76	80	8
TOTAL	107	114	121	129	137	147	152	158	164	17
COSTS ($)										
CAPACITY	23,373,640	25,324,922	27,426,161	29,691,181	32,135,132	34,774,783	33,423,078	35,131,994	36,911,761	38,765,43
ENERGY	12,993,256	13,721,248	14,505,186	15,350,228	16,262,027	17,246,838	17,245,624	17,883,193	18,547,196	19,238,77
TRANSMISSION	3,052,550	3,342,799	3,663,445	10,060,605	10,173,803	10,290,397	11,680,181	11,803,875	11,931,280	12,062,50
TOTAL	39,419,446	42,388,969	45,594,793	55,102,014	58,570,962	62,312,019	62,348,883	64,819,062	67,390,237	70,066,72
CAP $/KW/MO.	18.20	18.55	18.88	19.20	19.50	19.78	18.30	18.52	18.72	18.9
TRANS $/KW/MO	2.38	2.43	2.52	6.50	6.17	5.85	6.40	6.22	6.05	5.8
$/MWH	19.40	19.27	19.14	19.02	18.91	18.81	18.10	18.07	18.04	18.0

TRANS. INVEST									
LOADS (MW)	1995*	1996*	1997*	1998*	1999*	2000*	2001*	2002*	2003*
UAMPS	69	71	73	75	78	80	82	85	88
ST. GEORGE	57	60	63	66	69	73	76	80	84
WASH. COUNTY	25	27	28	29	31	32	34	36	37
BOUNTIFUL	17	18	18	19	19	20	21	21	22
PAYSON	4	4	5	5	5	5	5	5	5
SPRINGVILLE	4	4	5	5	5	5	5	5	5
TOTAL	177	184	192	199	207	215	224	232	242
RESOURCE (MW)									
HUNTER II	54	54	54	54	54	54	54	54	54
DCKY MTN.	70	70	70	70	70	70	70	70	70
BONANZA	0	0	0	0	0	0	0	0	0
IPP	53	60	68	75	83	91	100	109	118
TOTAL	177	184	192	199	207	215	224	232	242
TRANS. (MW)									
UP&L	89	92	95	97	100	103	107	110	113
CONSTRUCTION	88	92	97	102	107	112	117	123	129
TOTAL	177	184	192	199	207	215	224	232	242
COSTS ($)									
CAPACITY	40,696,318	42,707,802	44,803,384	46,986,816	49,262,023	51,632,959	54,103,952	56,679,447	59,364,033
ENERGY	19,959,152	20,709,605	21,491,433	22,306,036	23,154,879	24,039,437	24,961,324	25,922,200	26,923,775
TRANSMISSION	12,197,671	12,336,890	12,480,285	12,627,982	12,780,110	12,936,802	13,098,194	13,264,427	13,435,648
TOTAL	72,853,141	75,754,297	78,775,102	81,920,834	85,197,012	88,609,197	92,163,470	95,866,075	99,723,457
CAP $/KW/MO.	19.12	19.30	19.48	19.66	19.82	19.99	20.14	20.29	20.44
TRANS $/KW/MO	5.73	5.58	5.43	5.28	5.14	5.01	4.88	4.75	4.63
$/MWH	17.97	17.94	17.92	17.89	17.86	17.84	17.81	17.79	17.77

EXHIBIT B

TO SECOND AMENDED

VERIFIED APPLICATION

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	)	Case No. 85-2011-01

PREFILED TESTIMONY AND EXHIBITS

OF

GEORGE R. COMPTON

TESTIFYING IN BEHALF OF

UTAH ASSOCIATED

MUNICIPAL POWER SYSTEMS

IN SUPPORT OF

ITS SECOND AMENDED

VERIFIED APPLICATION

January 10, 1986

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF THE UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS FOR ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION OF A TRANSMISSION LINE IN SOUTHWESTERN UTAH	)	TESTIMONY AND EXHIBITS GEORGE R. COMPTON Case No. 85-2011-01

QUESTION:

Please state your name.

ANSWER:

George Richard Compton.

QUESTION:

Are you the same George Compton whose testimony was filed October 30, 1985 on behalf of UAMPS?

ANSWER:

Yes I am.

QUESTION:

What is the purpose of your filing at this time?

ANSWER:

I will be presenting, in a detailed, quantitative way, a discussion of the savings that would accrue to the UP&L ratepayers from UAMPS owning a "down-sized" 230 kV transmission line in southwestern Utah.

George R. Compton

QUESTION:

Can you explain how you have derived the savings that would accrue to the UP&L ratepayers?

ANSWER:

Yes. On Exhibit GRC-3, I have shown the savings from a 230 kV line built by UAMPS IPP to St. George without any interconnection.

QUESTION:

Based on your analysis, is there a savings for the UP&L ratepayers if UAMPS constructs a 230 kV line to St. George?

ANSWER:

Yes. As shown on Exhibit GRC-3, the reduction in the UP&L revenue requirement will be from $4,814,000.00 in 1988 to $12,195,000.00 in 1995.

QUESTION:

Can you describe how those numbers were derived?

ANSWER:

Yes. The year 1988 is when UP&L's short line out of Cedar City down to St. George would be in service under the proposal in UP&L's Schedule DLB-10. The year 1995 is the last year of the detailed UP&L analysis as contained in its prefiled testimony. That analysis was the source of most of the input for the scenario set forth in Exhibit GRC-3.

George R. Compton

The investment shown in Schedule DLB-10 as taking place by 1988 is 26.1 million dollars. Line 15 of page seven of Schedule OTC-1 shows the annual revenue requirement associated with an investment of 76.6 million dollars (also found in DLB-11). The first figures on Line 2 of Exhibit GRC-3 were obtained by applying a ratio of 26.1/76.6 to the afore-mentioned revenue requirement figures found in Exhibit OTC-1 and rounding to the nearest ten thousand dollars. Schedule DLB-10 shows an additional UP&L investment of 53.3 million dollars coming into service in 1991. The annual revenue requirement figures for that investment were obtained by employing the same ratio procedure. The two revenue requirement streams were then added together to yield the Line 2 figures for 1991 through 1995.

The Line 3 figures are the sum of the UP&L projections of net non-coincident peak loads for Hurricane, St. George, the St. George division of Dixie-Escalante REA and the cities of LaVerkin, Santa Clara, Ivins and Washington. The 1988 through 1995 total coincident peak loads for these communities are derived from Schedule DLB-9. In order to obtain the net loads, fifteen megawatts of St. George's self generation were deducted, along with the CRSP allocations for St. George and Dixie-Escalante. Hurricane's CRSP allocation was not deducted because its wheeling is not included in the low-tariff contract

between WAPA and UP&L. Finally, a non-coincidence factor of 4.5 percent was used to convert coincident peak figures to non-coincident figures.

The lost wheeling revenue figures on Line 4 of Exhibit GRC-3 were obtained by multiplying the Line 3 loads by the respective year's wheeling rates. The wheeling rate used was 27.17 dollars per kilowatt year in 1986, inflated at two percent. These values were obtained from the second note of page 11 of Exhibit DLB-14.

Line 5, showing a reduction in the state tax portion of the UP&L revenue requirement is included for informational purposes only.

Line 6, the reduction in the UP&L revenue requirement, is derived from subtracting the figures on Line 4 from the figures on Line 2. It should be emphasized that Line 2 shows the costs avoided by UP&L by virtue of the UAMPS investment in a 230 kV line in Southwestern Utah. Again, Line 4 constitutes the partially offsetting reduction in revenues associated with the loss of a portion of the UAMPS-Deseret generation loads by UP&L.

QUESTION:

Are you developing an analysis of other scenarios which would give UAMPS ownership of transmission capacity to southwestern Utah?

ANSWER:

Yes. The analysis in GRC-3 assumes no Nevada intertie in the near term. Should there be an intertie, additional investments would be made to accommodate transmission to Nevada. I will provide analyses of scenarios involving joint participation between UAMPS and UP&L in my next prefiled testimony.

QUESTION:

Does this conclude your testimony?

ANSWER:

Yes.

ESTIMATED REDUCTION IN ANNUAL UP&L REVENUE REQUIREMENT FROM SUBSTITUTING
A UAMPS TRANSMISSION LINE IN SOUTHWESTERN UTAH FOR A UP&L LINE ($x1000)

No Nevada Intertie. UAMPS Places
Its 230KV Line In Service By Beginning Of 1988.
COMPARISON: UP&L's DLB-10 Scenario

1. YEAR	1988	1989	1990	1991	1992	1993	1994	1995
2. UP&L Revenue Requirement - 230KV Lines from Cedar and Sigurd - In Service by 1988 and 1991 Respectively*	6,200	5,980	5,710	18,120	17,460	16,710	16,030	15,410
3. UP&L-Projected UAMPS-DG&T Firm NCP Net Loads (Excluding Newcastle) (MW's)	50	58	67	73	80	87	94	101
4. UP&L's Wheeling Revenues Lost Due to Transfer of UAMPS-DG&T Firm Loads	1,386	1,640	1,932	2,147	2,400	2,662	2,934	3,215
5. Reduction in State Tax Portion of UP&L Revenue Requirement	155	150	143	453	437	418	401	385
6. Reduction in UP&L Revenue Requirement	4,814	4,340	3,778	15,973	15,060	14,048	13,096	12,195

Exhibit J

a different vote is required, in which case such express provision shall govern and control.

ARTICLE IV
DIRECTORS

Section 1. Number and Qualification. The affairs of System shall be governed by and be under the control of a Board of Directors composed of eleven persons, or such greater or lesser number as may be required from time to time by the Initial Agreement, all of whom shall be Representatives.

Section 2. Power and Duties. The Board of Directors shall have the powers and duties necessary for the management, administration and regulation of the affairs of System and may do all such acts and things as are not inconsistent with the laws of the State of Utah, the Organization Agreement, or these By-Laws. The powers of the Board of Directors shall include, but shall not be limited to, the exercise by the Initial Agreement, subsequent agreements, or as are authorized powers of System by law.

A party whose Representative or designee is not a Director may from time to time designate one of the acting Directors by written notice to the Secretary and the consenting or assigned Director to act as special liaison for the party. As such special liaison, the Director so consenting or assigned shall, as a special responsibility, communicate information,

instructions and desires between the System and the Representative of his designated party or parties. With respect to a project or projects in which his designated party has an interest, the Director shall invite the Representative of the designated party to be present during deliberations and actions of the Board and shall communicate to the Board the position, concerns or desires of the designated party. A Representative or agent of any party is entitled to be heard at all meetings of the Board.

Notwithstanding special assignments, the primary obligation of the Director is to endeavor to act in the best interests of the System.

Section 3. Election and Term of Office of Directors. The term of office of a Director shall be as set forth in Article VII of the Initial Agreement. The four parties having the greatest financial obligations (as determined by general councel to the System) to the System at the time of any election of directors shall be entitled to have their Representatives or designees serve as Directors and shall be deemed elected, and vacancies shall be filled from Representatives of such four parties until each has a Representative or designee as Director.

The Representatives present and voting at an annual or special meeting wherein one or more Directors are to be elected shall ballot separately for each remaining position of Director to be filled after selection of the four commencing with the directorship for the longer term and proceeding thereafter

with the next equal or shorter term until all positions are filled, all pursuant to said Article VII. Each Representative present at such meeting shall be entitled to cast one vote, by written ballot, for each position of Director to be filled. A candidate receiving a majority of the votes cast shall be deemed elected. If no candidate receives a majority of the votes cast on the first ballot, the Representatives present and voting at such meeting shall next cast ballots for the two candidates receiving the greatest number of votes on the first ballot, whereupon the candidate then receiving the majority of votes cast on such second ballot shall be deemed elected. Cumulative voting for Directors is expressly prohibited.

Section 4. Vacancies. Vacancies in office of Directors caused by the resignation, removal, death, or incapacity of a Director, or for any other cause whatsoever, shall be filled by the party he represented if the party is one of the four whose Representative or designee is deemed elected or in the case of other Directors, by election for the balance of the unexpired term by the Representatives present and voting at the annual or special meeting next following the occurence of such vacancy or, in the case of the removal of a Director, in accordance with the provisions of Section 5 of this Article IV. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual or special meeting of Representatives called for such purpose.

Section 5. Removal of Directors. At any annual or special meeting of the Representatives duly called, any one or more of the Directors elected by the Representatives and not a Director who is deemed elected as a Representative of one of the four parties, may be removed by a vote of two-thirds of the entire Representatives and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed shall be given reasonable notice and an opportunity to be heard at the meeting.

Section 6. Resignation of Directors. Any Director may resign at any time by giving notice to the Board of Directors or to the Chairman of the Board, the Vice Chairman of the Board or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 7. Compensation and Allowances. Each Director shall receive compensation on a per diem basis for authorized time spent in conducting the affairs of System, at a daily rate established from time to time by the Representatives at annual or special meetings. Each Director shall also be reimbursed for all travel and lodging expenses necessarily incurred in the conduct of business for System as may be allowed by the Board of

Directors. A Director may also be an employee of System and receive a salary therefor. In no event, however, shall a Director receive compensation and allowances for serving both in his capacity as Director and employee of System. Such Director may elect to accept compensation and allowances for services rendered in the capacity of either Director or employee only.

Section 8. Organization Meeting. The organization meeting of the Board of Directors shall be held each year immediately following, and at the same place as, the annual meeting of Representatives. No notice shall be required for such organization meeting other than such public notice of meeting as may be required by the laws of the State of Utah relating to open and public meetings of political subdivisions.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly at such time and place, either within or without the State of Utah, as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be mailed to each Director, or communicated to each Director personally or by telephone or telegraph, at least three days prior to the day named for such meeting. To the extent applicable, public notice of such regular meetings shall be given as required by the laws of the State of Utah relating to open and public meetings of political subdivisions.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman on three days' notice to each Director, either mailed or communicated to each Director personally, or by telephone or telegraph, which notice shall state the time and place of such meeting and, in general terms, the purposes of such meeting. Special meetings of the Board of Directors shall be called by the Chairman or Secretary in like manner and on like notice on the written request of at leas three Directors. To the extent applicable, public notice of such meetings shall be given as required by the laws of the State of Utah relating to open and public meetings of political subdivisions.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of such meeting except where such attendance shall be for the express purpose of objecting that any such meeting has been unlawfully convened. Nothing herein contained, however, shall eliminate the need for public notice of meetings, if applicable, as required by the laws of the State of Utah relating to open and public meetings of political subdivisions.

Section 12. Quorum. At all meetings of the Board of Directors, four Directors, or such greater or lesser number of Directors as may be specified from time to time in the Initial Agreement, shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present and voting may adjourn the meeting from time to time until a quorum is present. Notice of any such adjourned meeting of the Board of Directors shall be mailed by the Chairman or Secretary to each Director, or communicated to each Director personally or by telephone or telegraph, at least one day prior to the day named for such adjourned meeting, which notice shall include the time, place and, in the case of an adjourned special meeting, the purposes, generally stated, of the meeting. The provisions of these By-Laws relating generally to waivers of notice of meetings of the Board of Directors shall be equally applicable to adjourned meetings of the Board of Directors. To the extent applicable, it shall be the duty of the Secretary to provide public notice of such adjourned meeting as required by the laws of the State of Utah relating to open and public meetings by political subdivisions.

Section 13. Fidelity Bonds. The Board of Directors shall require that all officers and employees of System handling

or responsible for the funds of System furnish adequate fidelity bonds. The premiums for such bonds shall be paid by System.

ARTICLE V

OFFICERS

Section 1. Designation. The principal officers of System shall be a Chairman, a Vice Chairman, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Chairman and the Vice Chairman shall be Directors, and the other officers may be, but need not be, Directors. Any person may hold two or more offices except that the Chairman may not be Vice Chairman or Secretary. The Directors may appoint one or more Assistant Treasurers and one or more Assistant Secretaries, and such other officers as in the judgment of the Directors may be necessary and who shall have such powers, duties and terms of office as may be designated by the Board of Directors.

Section 2. Election of Officers. The officers of System shall be elected annually by the Board of Directors at the annual organization meeting of the Board of Directors and shall hold office at the pleasure of the Board or until their successors shall be duly elected and qualified. A vacancy in any office shall be filled by the Board of Directors for the unexpired portion of the term of office of the person vacating such office.

Section 3. Removal of Officers. At any meeting of

Exhibit K

CHAPTER 47

S. B. No 198 (Passed March 10, 1977 In effect May 10, 1977)

INTERLOCAL CO-OPERATION ACT AMENDMENTS

AN ACT AMENDING SECTIONS 11-13-2, 11-13-5, 11-13-6, 11-13-14, 11-13-15, 11-13-18, AND 11-13-19, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 14, LAWS OF UTAH 1965, AND ENACTING SECTIONS 11-13-5.5, 11-13-25 AND 11-13-26, UTAH CODE ANNOTATED 1953; RELATING TO CITIES, COUNTIES AND LOCAL TAXING UNITS; PROVIDING AUTHORITY IN PUBLIC AGENCIES TO CONTRACT TO CREATE NEW ENTITIES TO PROVIDE SERVICES TO THE CONTRACTING AGENCIES AND OTHERS, INCLUDING OUT-OF-STATE PUBLIC AGENCIES; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS BY SUCH ENTITIES; AND PROVIDING FOR THE PAYMENT OF A FEE IN LIEU OF AD VALOREM PROPERTY TAX BY SUCH ENTITIES ON OUT-OF-STATE SALES.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 11-13-2, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read:

11-13-2. Purpose of act.

It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to co-operate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities and to provide the benefit of economy of scale, economic development and utilization of natural resources for the overall promotion of the general welfare of the state.

Section 2. Section amended.

Section 11-13-5, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read:

11-13-5. Agreements for joint or co-operative action—Resolutions by governing bodies required.

Any two or more public agencies may enter into agreements with one another for joint or co-operative action pursuant to [~~the provisions of~~] this act. Adoption of appropriate resolutions by the governing bodies of the participating public agencies [~~shall be~~] are necessary before any such agreement may enter into force.

Section 3. Section enacted.

Section 11-13-5.5, Utah Code Annotated 1953, is enacted to read:

11-13-5.5. Inter-agency agreements to create separate legal or administrative entity—Entity deemed a political subdivision of state—Powers—Entities formed to construct and operate electrical generation facility—Requirements.

Any two or more public agencies of the State of Utah may also agree to create a separate legal or administrative entity to accomplish the purpose of their joint or co-operative action, including the undertaking and financing of a facility or improvement to provide the service contemplated by such agreement. A separate legal or administrative entity is deemed a political subdivision of the state with power to:

(1) Own, acquire, construct, operate, maintain and repair or cause to be constructed, operated, maintained and repaired any facility or improvement set forth in such an agreement;

(2) Borrow money or incur indebtedness, issue revenue bonds or notes for the purposes for which it was created, assign, pledge or otherwise convey as security for the payment of any such bonded indebtedness, the revenues and receipts from such facility, improvement or service, which assignment, pledge or other conveyance may rank prior in right to any other obligation except taxes or payments in lieu thereof as hereinafter described payable to the State of Utah or its political subdivisions;

(3) Sell or contract for the sale of the product of the service, or other benefits from such facility or improvement to public agencies within or without the state on such terms as it deems to be in the best interest of its participants,

Any entity formed to construct any electrical generation facility shall at least 150 days before adoption of the bond resolution for financing the project, offer to enter into firm or withdrawable power sales contracts, which offer must be accepted within 120 days from the date offered or will be deemed rejected, for not less than 50% of its energy output, to suppliers of electric energy within the State of Utah who are existing and furnishing service in this state on the date of enactment of this section. However, the demand by such suppliers or the amounts deliverable to any such supplier or a combination thereof shall not exceed the amount allowable by the United States Internal Revenue Service in a way that would result in a change in or a loss of the tax exemption from federal income tax for the interest paid, or to be paid, under any bonds or indebtedness created or incurred by any entity formed hereunder. In no event shall the energy output available to the entity for use within this state be less than 25% of the total output.

EXHIBIT "K"

This section 11-13 5 5 shall only apply to the construction and operation of a facility to generate electricity

Section 4. Section amended.

Section 11-13-6, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read

11-13-6. Agreements for joint or co-operative action—Required provisions

Any such agreement shall specify the following

(1) Its duration

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created If a separate entity or administrative body is created to perform the joint functions, a majority of the governing body of such entity shall be constituted by appointments made by the governing bodies of the public agencies creating the entity and such appointees shall serve at the pleasure of the governing bodies of the creating public agencies

(3) Its purpose or purposes

(4) The manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget therefor

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination

(6) Any other necessary and proper matters

(7) The price of any product of the service or benefit to the consumer allocated to any buyer except the participating agencies within the state, shall include the amount necessary to provide for the payments of the in lieu fee provided for in 11 13 25

Section 5. Section amended.

Section 11-13 14, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read

11-13-14 Contracts by public agencies with each other or with legal or administrative entities created pursuant to act—Public agencies may create legal or administrative entities for services, activities or undertakings.

Any one or more public agencies may contract with [~~any one or more other public agencies~~] each other or with a legal or administrative entity created pursuant to this act to perform any governmental service, activity,

or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties In order to perform such service, activity or undertaking, a public agency may create, construct or otherwise acquire facilities or improvements in excess of those required to meet the needs and requirements of the parties to the contract In addition, a legal or administrative entity created by agreement under this act, may create, construct or otherwise acquire facilities or improvements to render service in excess of those required to meet the needs or requirements of the public agencies party to the agreement if it is determined by the public agencies to be necessary to accomplish the purposes and realize the benefits set forth in section 11 13 2, provided, that any excess which is sold to other public agencies, whether within or without the state, shall be sold on terms which assure that the cost of providing the excess will be recovered by such legal or administrative entity

Section 6. Section amended

Section 11 13 15, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read

11-13-15. Agreements for joint ownership, operation or acquisition of facilities or improvements authorized—Exercise of powers by legal or administrative entities created

Any two or more public agencies may make agreements between or among themselves

(1) [~~for~~] For the joint ownership of any one or more facilities or improvements which they have authority by law to own individually,

(2) [~~for~~] For the joint operation of any one or more facilities or improvements which they have authority by law to operate individually,

(3) [~~for~~] For the joint acquisition by gift, grant, purchase, construction, condemnation or otherwise of any one or more such improvements or facilities and for the extension, repair or improvement thereof[-] ,

(4) For the exercise by a legal or administrative entity created by agreement of public agencies of the State of Utah of its powers with respect to any one or more facilities or improvements and the extensions, repairs or improvements of them, or

(5) Any combination of the foregoing

Section 7. Section amended.

Section 11-13-18, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read

11-13-18. Control and operation of joint facility or improvement provided by contract.

Any facility or improvement jointly owned or jointly operated by any two or more public agencies or acquired or constructed pursuant to an agreement under this act may be operated by any one or more of the interested public agencies designated for the purpose or may be operated by a joint board or commission or a legal or administrative entity [~~to be~~] created for the purpose or through an agreement by a legal or administrative entity and a public agency receiving service of other benefits from such entity or may be controlled and operated in some other manner, all as may be provided by appropriate contract. Payment for the cost of such operation shall be made as provided in any such contract.

Section 8. Section amended.

Section 11-13-19, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1965, is amended to read:

11-13-19. Bond issues by public agencies or legal or administrative entities authorized—Conditions and requirements of bonds.

Bonds may be issued by any public agency for the acquisition of an interest in any [~~such~~] jointly owned improvement or facility or combination of such facility or improvement, [~~thereof~~] or may be issued to pay all or part of the cost of the improvement or extension thereof in the same manner as bonds can be issued by such public agency for its individual acquisition of such improvement or facility or combination of such facility or improvement [~~thereof~~] or for the improvement or extension thereof. A legal or administrative entity created by agreement of two or more public agencies of the State of Utah under this act may issue bonds or notes under a resolution, trust indenture or other security instrument for the purpose of financing its facilities or improvements. The bonds or notes may be sold at public or private sale, mature at such times and bear interest at such rates and have such other terms and security as the entity determines. Such bonds shall not be a debt of any public agency party to the agreement. Bonds and notes issued under this act are declared to be negotiable instruments and their form and substance need not comply with the Uniform Commercial Code.

Section 9. Section enacted.

Section 11-13-25, Utah Code Annotated 1953, is enacted to read:

11-13-25. Sale of part of legal or administrative entity's benefits outside of state—Fees—Basis—Provisions of contracts.

If a legal or administrative entity created under this act sells part of its capacity, service or other benefit to consumers outside the state, it shall pay an annual fee in lieu of ad valorem property tax on the assessed valuation of the percentage of the facility or improvement which is used to produce the capacity, service or benefit that is sold outside the state. Each service contract with an outside state consumer shall contain a provision for payment of the in lieu fee by the outside consumer.

Section 10. Section enacted.

Section 11-13-26, Utah Code Annotated 1953, is enacted to read:

11-13-26. Findings—Sales and use tax applicable at sale—Contributions equal to sales and use tax.

It is recognized by the legislature that the creation and development of facilities or improvements pursuant to this act, particularly in rural areas, may have a significant financial impact upon local communities, and that a method should be established to make financial assistance available to these local communities to enable them to provide public services for increased populations. Anything provided in 59-16-6 (1) notwithstanding, whenever a legal or administrative entity created under this act sells part of its capacity, service, or benefit to other public or private agencies, it shall be subject to state sales and use tax. Public agencies or legal and administrative entities are authorized and directed to make contributions from the proceeds of revenue bonds issued pursuant to section 11-13-19 to counties, municipalities, and school districts which are affected by such facilities or improvements. Such contributions shall be equal to the amount payable for state and local sales and use tax if purchased or used by a non-exempt entity, and shall be collected and payable by the entity in accordance with present law.

Section 11. Section enacted.

Section 11-13-27, Utah Code Annotated 1953, is enacted to read:

11-13-27. Certificate of public convenience and necessity to be secured prior to construction by political subdivision—Application.

Any political subdivision organized pursuant to this act before proceeding with the construction of any electrical generating plant or transmission line shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the State of Utah at the present time or in the future. This section shall become effective for all projects initiated after the effective date hereof, and shall not apply to those for which feasibility studies were initiated prior to said effective date.

Passed into law without Governor's signature.